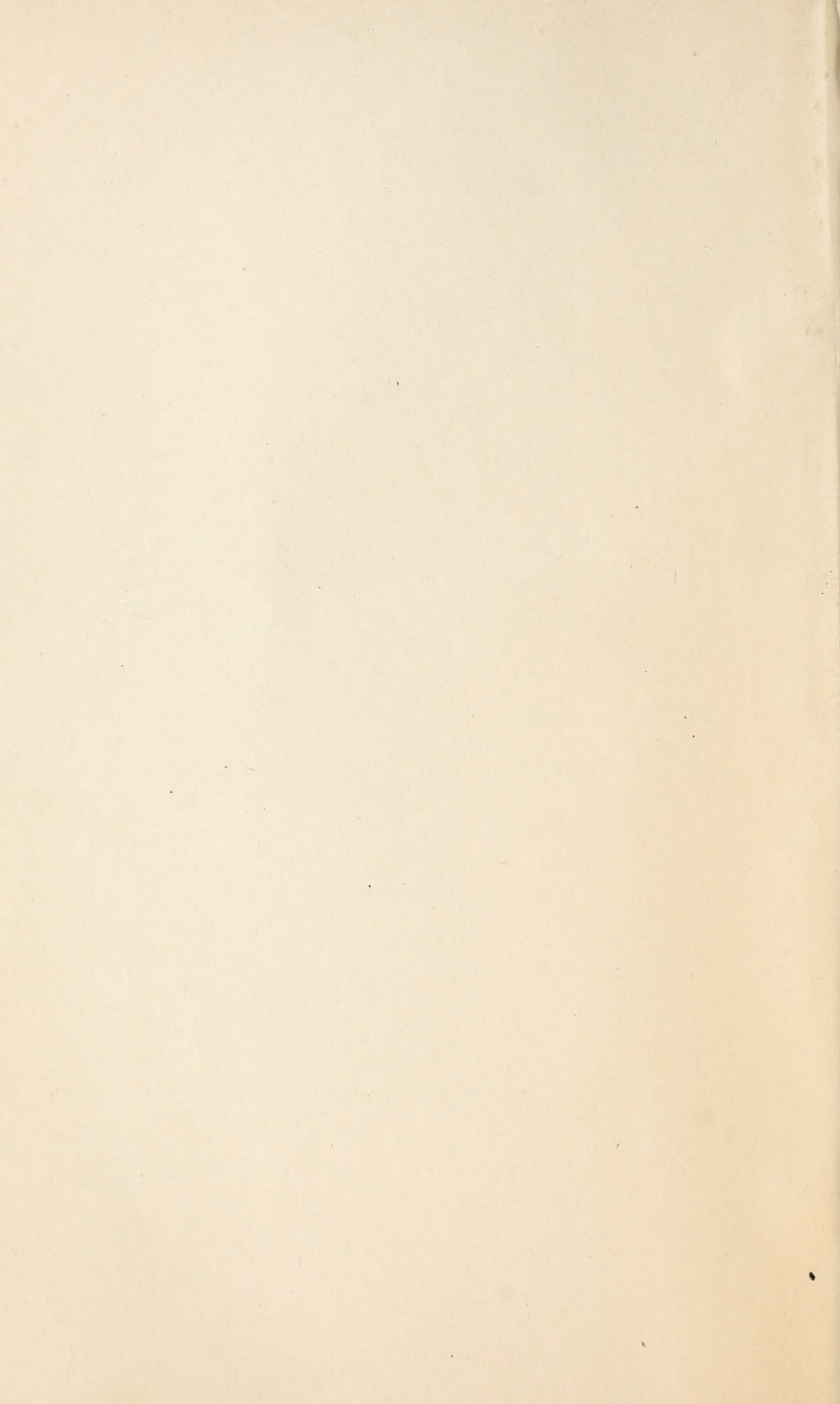



A. D. Hayes.





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DISTRICT OF COLUMBIA CODE

THE ACT ENTITLED
"AN ACT TO ESTABLISH A CODE OF LAW FOR THE
DISTRICT OF COLUMBIA" (Chapter 854, 31 Stat. 1189)
APPROVED MARCH 3, 1901, AS AMENDED UP
TO AND INCLUDING JUNE 7, 1924

AND

CERTAIN LEGISLATIVE ACTS RELATING TO
THE DISTRICT OF COLUMBIA, OF
GENERAL INTEREST TO THE
LEGAL PROFESSION

ANNOTATED



WASHINGTON
GOVERNMENT PRINTING OFFICE
1925

DISTRICT OF COLUMBIA CODE

THE ACT ENTITLED
"AN ACT TO ESTABLISH A CODE OF LAW FOR THE
DISTRICT OF COLUMBIA," (CHAPTER 154, 31 STAT. 1159)
AS AMENDED MARCH 3, 1907, AS AMENDED UP
TO AND INCLUDING JUNE 7, 1911

AND

CERTAIN LEGISLATIVE ACTS RELATING TO
THE DISTRICT OF COLUMBIA

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UNNOTATED



WASHINGTON
GOVERNMENT PRINTING OFFICE
1911

SENATE CONCURRENT RESOLUTION 12

Submitted by Mr. MOSES

Resolved by the Senate (the House of Representatives concurring), That the laws relating to the District of Columbia and the laws of former municipal governments in said District, as recompiled, indexed, and annotated in codified form up to and including March 4, 1923, under authority of a Senate Resolution of January 3, 1924, be printed as a Senate document, and that five hundred additional copies be printed and bound for the use of the Senate, and one thousand copies for the use of the House of Representatives.

Passed June 4, 1924.

Recompiled, indexed, and annotated under the direction of the Committee on Printing, United States Senate, by Harry A. Hegarty and Edwin A. Mooers, of the District of Columbia bar.

EDITORIAL PREFACE

This volume includes the Code of Law for the District of Columbia as enacted March 3, 1901 (31 Stat. L., pt. 1, pp. 1189 et seq.), and all amendments to June 7, 1924. Many acts, although not strictly amendments to the code, but, nevertheless, applicable in the District of Columbia and to frequent use in the legal profession, have been included in an appendix. In view of the provisions of section 1 of the code, that "all general acts of Congress not locally inapplicable in the District of Columbia" shall be and remain the law, unless inconsistent with, or replaced by some provision of the code, it would be impossible in the scope of a single volume to include in the appendix all acts in force in the District of Columbia.

The appendix has not been annotated, but the annotations to the code proper include all decisions of the Court of Appeals of the District of Columbia and the Supreme Court of the United States, from Volume 1 of the reports of the Court of Appeals to and including Volume 54, and such cases in Volumes 51 and 52 of the Washington Law Reporter (unofficial) as have not as yet been published in the official reports. In the preparation of the synopses of cases, an effort has been made to adopt, as far as practicable, the language of the court.

When sections of the original code have been repealed without the substitution of sections of like number, they have been included in 8-point type and placed within heavy brackets to preserve the continuity of the section numbers. Language interpolated in any section has been printed in italics. References to the Statutes at Large containing amendments, and to preexisting laws, will be found in the annotations.

We are much indebted to William S. Torbert, Esq., who kindly permitted us to use his copyrighted index of 1903, which we have revised, amplified, and brought down to date.

We are also deeply obligated to Mr. Justice Adolph A. Hoehling and Mr. Justice Wendell P. Stafford, of the Supreme Court of the District of Columbia, for their valuable suggestions in the preparation of this work, and to John N. Breen, Esq., of the District of Columbia bar, for his able assistance in the editorial work.

HARRY A. HEGARTY.
EDWIN A. MOOERS.

WASHINGTON, D. C., January 2, 1925.

CODE OF LAW FOR THE DISTRICT OF COLUMBIA

AS AMENDED TO JUNE 7, 1924

AN ACT TO ESTABLISH A CODE OF LAW FOR THE DISTRICT OF COLUMBIA

Volume 31, Statutes at Large, pages 1189 et seq.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following is hereby enacted and declared to be a code of law for the District of Columbia, to go into effect and operation from and after the first day of January, in the year of our Lord nineteen hundred and two.

2. *And be it further enacted,* That in the interpretation and construction of said code the following rules shall be observed, namely:

First. Words importing the singular number shall be held to include the plural, and vice versa, except where such construction would be unreasonable.

Second. Words importing the masculine gender shall be held to include all genders, except where such construction would be absurd or unreasonable.

Third. The word "person" shall be held to apply to partnerships and corporations, unless such construction would be unreasonable, and the reference to any officer shall include any person authorized by law to perform the duties of his office, unless the context shows that such words were intended to be used in a more limited sense.

Fourth. Wherever the word "executor" is used it shall include "administrator," and vice versa, unless such application of the term would be unreasonable.

Fifth. Wherever an oath is required an affirmation in judicial form, if made by a person conscientiously scrupulous about taking an oath, shall be deemed a sufficient compliance.

Sixth. The words "insane person" and "lunatic" shall include every idiot, non compos, lunatic, and insane person.

CHAPTER ONE

LAWS REMAINING IN FORCE

SECTION 1. The common law, all British statutes in force in Maryland on the twenty-seventh day of February, eighteen hundred and one, the principles of equity and admiralty, all general acts of Congress not locally inapplicable in the District of Columbia, and all acts of Congress by their terms applicable to the District of Columbia and to other places under the jurisdiction of the United States, in force at the date of the passage of this act shall remain in force except in so far as the same are inconsistent with, or are replaced by, some provision of this code.

Cunningham v. Rodgers, 50 App. D. C. 51 (1920); 48 W. L. R. 216.

"Except as 'repealed by express statutory provision, or modified by inconsistent legislation, or where it has become obsolete or unsuited to our republican form of government, the common law of England in all its branches, both civil and criminal, remains to-day the law of the District of Columbia * * *'" *Lisner v. Hughes*, 49 App. D. C. 40 (1919); 47 W. L. R. 310, citing *De Forrest v. U. S.*, 11 App. D. C. 466.

Cohen v. Cohen, 47 App., D. C. 129 (1917); 45 W. L. R. 802.

Common-law method of procuring talesman in capital cases when regular panel is exhausted. *Milano v. U. S.*, 40 App. D. C. 379 (1913); 41 W. L. R. 357.

Gompers v. U. S., 233 U. S. 604 (1914), reversing 40 App. D. C. 293.

Act of January 15, 1897 (29 Stat. L. 487) and Sec. 330 of chap. 14 of the Federal Penal Code permitting jury to qualify verdict of guilty in cases of murder and rape are superseded by code. *Johnson v. U. S.*, 38 App. D. C. 347 (1912); affirmed 225 U. S. 405.

Common law as to surface waters prevails. *B. & O. R. Co. v. Thomas*, 37 App. D. C. 255 (1911); 39 W. L. R. 496.

As to common-law crimes and jurisdiction to try the same, see *Palmer v. Lenovitz*, 35 App. D. C. 303 (1910); 38 W. L. R. 474. See also Act approved July 16, 1912, 37 Stat. L. part 1, p. 192.

Act of Maryland Legislative Assembly of 1723, ch. 16, sec. 10 (Abert's Comp. Stat. D. C. p. 176), relative to Sunday work does not apply in District of Columbia. *D. C. v. Robinson*, 30 App. D. C. 283 (1908); 36 W. L. R. 101.

U. S. v. B. & O. R. Co., 26 App. D. C. 581 (1906); 34 W. L. R. 143.

"All crimes, therefore, and other appropriate and settled forms of procedure for enforcement, known to the common law, except as otherwise provided by statute, are still in force in this District." *Hamilton v. U. S.*, 26 App. D. C. 382 (1905); 34 W. L. 558, following *Hill v. U. S.*, 22 App. D. C. 395, 31 W. L. R. 552.

Benson v. Henkel, 198 U. S. 1 (1905).

This section is a general legislative declaration in affirmance of preexisting decisions upon the subject. *Moss v. U. S.*, 23 App. D. C. 475 (1904); 32 W. L. R. 342.

The code supersedes prior law relative to selection of grand and petit jurors. *Clark v. U. S.*, 19 App. D. C. 295 (1902); 30 W. L. R. 70.

As to effect of R. S. U. S., relating to D. C. on prior legislation, see *Costello v. Palmer*, 20 App. D. C. 210; 30 W. L. R. 402.

THE JUDICIARY

SEC. 2. The judicial power in the District shall continue as at present to be vested in—

First. Inferior courts, namely, justices of the peace and the police court; and

Second. Superior courts, namely, the supreme court of the District of Columbia, the court of appeals of the District of Columbia, and the Supreme Court of the United States.

See act of February 17, 1909 (35 Stat. L., pt. 1, p. 623), and act of March 3, 1921 (41 Stat. L., pt. 1, p. 1310), creating municipal court (*infra*, pp. 519, 521).

See also act of March 19, 1906 (34 Stat. L., pt. 1, p. 73), creating juvenile court, p. 509.

The municipal court is a part of the judicial system of the District. *W. B. Moses & Sons v. Hayes*, 36 App. D. C. 194 (1911) ; 39 W. L. R. 39.

SUBCHAPTER ONE

JUSTICES OF THE PEACE

SEC. 3. APPOINTMENT AND QUALIFICATIONS.—There shall be six justices of the peace in the District, who shall be appointed by the President of the United States, for a term of four years, unless sooner removed as provided by law: *Provided*, That no person shall be appointed to said office unless he shall have been a bona fide resident of said District for the continuous period of at least five years immediately preceding his appointment, and shall either have held the office of justice of the peace in said District for a period of at least two years or shall have been engaged in the actual practice of law before the supreme court of the District for a period of at least five years prior to his appointment. Each of said justices before entering upon the duties of his office shall take an oath for the faithful and impartial performance of the duties of his office, and shall give bond in such form, in such penalty, and with such surety or sureties as may be prescribed by the supreme court of the District. And said supreme court shall from time to time divide the said District into subdistricts and prescribe the place in each subdistrict where the justice thereof shall have his office for the transaction of business, and may change the boundaries of such subdistricts and the localities of the offices of the justices therein from time to time as the volume and convenience of the business may require. No justice of the peace during his term of office shall engage in the practice of the law, subject to the penalty of removal from his office. When the number of such justices of the peace shall be reduced by death, resignation, or expiration of term of service, or otherwise, to six, the number of such justices of the peace shall be six only, and if the number shall not be reduced to six until the expiration of the term of the present justices of the peace only six vacancies shall then be filled.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 520), repealing 31 Stat. L., pt. 1, p. 1189.

Anderson v. Morton, 21 App. D. C. 444; 31 W. L. R. 274 (1903) ; writ of error to Supreme Court U. S. dismissed, 195 U. S. 639.

See act of February 19, 1895 (28 Stat. L. 668).

See Municipal Court Acts, pp. 519, 521, *infra*.

SEC. 4. SUBDISTRICTS.—No justice of the peace shall sit for the trial of causes in any subdistrict other than the one in which his office is situated: *Provided*, That in case the office of any justice of the peace

shall become vacant by death or otherwise, the said supreme court, or any justice thereof, may designate one of the other justices to preside temporarily in that subdistrict until the vacancy shall be filled: *And provided further*, That if any justice of the peace shall be disqualified to act by reason of interest, illness, or other cause, any other justice of the peace of the District, on the written request of the justice so disqualified, may preside in his absence, or, if no such written request be made, such justice as may be designated by the said supreme court, or one of the justices thereof, shall preside.

See Municipal Court Acts, pp. 519, 521, *infra*.

SEC. 5. No resident of the District shall be sued in any subdistrict other than the one in which he resides, and no nonresident of the District having a place of business therein shall be sued in any subdistrict other than the one in which such place of business is situated: *Provided*, That where two or more persons are sued together the suit may be brought in the subdistrict in which any one of the defendants resides. When a corporation is a defendant, its place of business shall be deemed its residence for the purpose of this section, and if it shall have in the District more than one place of business the suit may be brought in the subdistrict in which any one of its places of business is situated.

Should a suit be brought against any party or corporation in any district in which he or it does not reside or do business, and a plea to the jurisdiction on this account be filed by said defendant, the party or corporation interposing such plea shall disclose under oath the district in which he or it should have been sued; and the justice, upon sustaining such plea, shall certify the cause for trial to the justice sitting in the district where suit should have been instituted; and should no such plea be filed before trial the justice shall be deemed to have had full jurisdiction.

See Municipal Court Acts, pp. 519, 521, *infra*.

Act approved June 30, 1902 (31 Stat. L., pt. 1, p. 521).

Anderson vs. Morton, see section 3, *supra*.

SEC. 6. SALARY.—Each of said justices of the peace shall receive an annual salary of three thousand dollars, and the further sum of two hundred and fifty dollars annually for rent, stationery, and other expenses, to be paid monthly by the District of Columbia; and he shall render monthly accounts to the auditor of the District of Columbia of all moneys received by him for fees, and shall pay over such fees to the collector of said District and take his receipt in duplicate therefor, and file one of them with said auditor and retain the other in his office, and the money so collected shall be disposed of by said collector as other moneys belonging to the said District are.

See Municipal Court Acts, pp. 519, 521, *infra*.

SEC. 7. JURY TRIALS.—Trial by jury before justices of the peace is hereby abolished.

See Municipal Court Acts, pp. 519, 521, *infra*.

Groff v. Miller, 20 App. D. C. 353 (1902); 30 W. L. R. 434.

Key v. Roberts, 20 App. 391 (1902); 30 W. L. R. 436 (cited in 189 U. S. 85).

SEC. 8. RULES AND FEES.—The supreme court of the District of Columbia in general term shall make rules regulating the practice and

pleading before justices of the peace, and in relation to appeals from their judgments, not inconsistent with law, and may alter and amend the same from time to time, and shall also fix the fees to be charged by said justices of the peace, and alter them from time to time as justice may require: *Provided*, That in all cases of concurrent jurisdiction the defendant may remove the case for trial into the supreme court of the District by a writ of certiorari (to be awarded by said court or one of the justices thereof upon a petition under oath, the form and substance whereof shall be prescribed by said court).

See Municipal Court Acts, pp. 519, 521, *infra*.

W. B. Moses & Sons v. Hayes, 36 App. D. C. 194 (1911); 39 W. L. R. 39.

Brown v. Slater, 23 App. D. C. 51 (1903); 32 W. L. R. 18.

Bradford v. Brown, 22 App. D. C. 455 (1903); 31 W. L. R. 696.

Warner v. Jenks, 12 App. D. C. 104 (1898); 26 W. L. R. 131.

Hendley v. Clark, 8 App. 165 (1896); 24 W. L. R. 197.

SEC. 9. JURISDICTION.—The said justices of the peace shall have jurisdiction in all civil cases in which the amount claimed to be due for debt or damages arising out of contracts, express or implied, or damages for wrongs or injuries to persons or property, does not exceed three hundred dollars, including all proceedings by attachment or in replevin where the amount claimed or the value of the property involved does not exceed said sum, except in cases involving the title to real estate, actions to recover damages for assault or assault and battery, or for malicious prosecution, or actions against justices of the peace or other officers for official misconduct, or actions for slander or libel, or actions on promises to marry; and said jurisdiction shall be exclusive when the amount claimed for debt or damages or the value of personal property claimed does not exceed fifty dollars, and concurrent with the said supreme court when it exceeds fifty dollars.

Any justice of the peace may at any time, including Sundays and legal holidays, on complaint under oath or actual view, issue warrants returnable to the police court against persons accused of crimes and offenses committed in the District of Columbia, and he shall make a record of his proceedings in every case in a book to be kept for that purpose. Such warrants shall be issued free of charge.

See Municipal Court Acts, pp. 519, 521, *infra*.

Act of April 21, 1906 (34 Stat. L. pt. 1, p. 126).

Retrial of title to real estate see Gray v. Ward, 45 App. D. C. 498 (1916); 44 W. L. R. 773.

W. B. Moses v. Hayes, 36 App. D. C. 194 (1911); 39 W. L. R. 39.

Brown v. Slater, 23 App. D. C. 51 (1903); 32 W. L. R. 18.

Bradford v. Brown, 22 App. D. C. 455 (1903); 31 W. L. R. 696.

Groff v. Miller, 20 App. 353 (1902); 30 W. L. R. 434.

SEC. 10. TRESPASS.—The said jurisdiction of justices of the peace shall extend to cases of trespass upon or injury to real estate: *Provided*, That if the defendant shall file with the justice an affidavit that he claims title or acts under a person claiming title to the real estate, setting forth the nature of his title, the justice shall take no further cognizance of the case.

See Municipal Court Acts, pp. 519, 521, *infra*.

Brown v. Slater, 23 App. 51 (1904); 32 W. L. R. 18.

SEC. 11. NONRESIDENTS.—Nonresidents shall not commence a suit before a justice of the peace without first giving security for costs.

See Municipal Court Acts, pp. 519, 521, *infra*.

R. S. D. C., sec. 1002, Comp. St. D. C., p. 310, sec. 12.

This section is intended for the benefit of the defendant, and may be waived by him. *Guarantee Savings Co. v. Pendleton*, 14 App. D. C. 384 (1899); 27 W. L. R. 233 (cited with approval in *Boss v. Hagan*, 49 App. D. C. 106 (1919); 47 W. L. R. 749). A general appearance after motion to dismiss for failure to give security for costs has been overruled constitutes a waiver. *Ib.*

SEC. 12. *Judgments and Executions.*—It shall be lawful for any justice of the peace, in all cases within his jurisdiction, to try, hear, and determine the matter in controversy between the parties upon their allegations and proofs, and to give judgment according to law; and all judgments for money rendered by them shall bear interest from their date until paid or satisfied, unless by the terms of the judgment interest runs from an earlier date. *Justices of the peace are authorized to issue writs of execution in all cases in which they are authorized to render judgment. A judgment entered by a justice of the peace shall remain in force for three years and no more after its rendition, unless the same shall have been docketed in the supreme court of the District of Columbia, as provided by section twenty-nine.*

See Municipal Court Acts, pp. 519, 521, *infra*.

Also act of June 30, 1902 (32 Stat. L., pt. 1, p. 521), by which the last two sentences in the section were added.

SEC. 13. *REPLEVIN.*—A justice of the peace shall have authority to issue a writ of replevin whenever a plaintiff shall file with him a declaration in replevin, in the following or an equivalent form, to wit:

“The plaintiff sues the defendant for wrongfully taking and detaining (or wrongfully detaining) his, said plaintiff’s, goods and chattels, to wit (here describe them), of the value of ——— dollars. And the plaintiff claims that the same may be taken and delivered to him, or, if they are eloigned, that he may have judgment for their value and all mesne profits and damages, which he estimates at ——— dollars, besides costs.” And at the same time said plaintiff, his agent, or attorney shall file an affidavit stating, first, that, according to affiant’s information and belief, the plaintiff is entitled to recover possession of the chattels described in the declaration; secondly, that the defendant has seized and detains or detains the same; thirdly, that said chattels were not subject to such seizure or detention, and were not taken under any writ of replevin *between the parties*; fourthly, that said chattels are not of the value of more than three hundred dollars; and at the same time the plaintiff shall enter into an undertaking, with surety approved by said justice, submitting to the jurisdiction of the court, to abide by and perform the judgment of said justice’s court or of the supreme court of the District of Columbia.

See Municipal Court Acts, pp. 519, 521, *infra*.

32 Stat. L., pt. 1, p. 521.

SEC. 14. *OFFICER’S RETURN.*—If the officer’s return of the writ of replevin be that he has served the defendant with copies of the declaration, affidavit, and summons, but that he could not get possession of the goods and chattels sued for, the plaintiff may prosecute the action for the value of the goods and damages for the detention, not

to exceed in all three hundred dollars, or he may renew the writ, in order to get possession of the goods and chattels themselves.

See Municipal Court Acts, pp. 519, 521, *infra*.

Act of February 9, 1895, sec. 15 (28 Stat. L. p. 668).

SEC. 15. PUBLICATION.—If the officer's return be that he has taken possession of the goods and chattels sued for, but that the defendant is not to be found, the said justice may order that the defendant appear to the action by some fixed day, and cause notice of such order to be given by publication in some newspaper of said District at least three times, the first publication to be at least twenty days before the day fixed for the defendant's appearance; and if the defendant fails to appear, the court may proceed, as in case of default after personal service, to render judgment for the property in favor of the plaintiff.

See Municipal Court Acts, pp. 519, 521, *infra*.

Act of February 19, 1895, sec. 16 (28 Stat. L. p. 668).

SEC. 16. PLEAS.—If the defendant appears, he may plead not guilty, in which case all matters of defense may be given in evidence, or he may plead specially.

See Municipal Court Acts, pp. 519, 521, *infra*.

Act of February 19, 1895, sec. 18 (28 Stat. L. p. 668).

SEC. 17. MARSHAL TO RETAIN PROPERTY.—Property taken by the marshal under a writ of replevin, issued by a justice of the peace, shall be retained by him for three days, exclusive of Sundays and legal holidays, before delivering the same to the plaintiff, in order that the defendant or other persons claiming an interest therein may present objections to the said justice to the sufficiency of the security on the undertaking or the jurisdiction of said justice, and if the said justice shall deem said undertaking insufficient, such property may be directed to be retained by the marshal for a further short time, to be designated by said justice, until an undertaking to be approved by him shall be filed, in default of which the marshal shall return the property to the person from whom it was taken; or if it shall be made to appear to the said justice that the property is of the value of over three hundred dollars he shall quash the writ of replevin and direct the property to be returned to the party out of whose possession it was taken.

See Municipal Court Acts, pp. 519, 521, *infra*.

Wallace v. Degree, 38 App. 145 (1912); 40 W. L. R. 8.

SEC. 18. DAMAGES FOR PLAINTIFF.—Whether the defendant plead and the issue joined be found against him, or his plea be held bad, or he make default after personal service, the plaintiff's damages shall be the full value of the goods, not to exceed three hundred dollars, if elowned by the defendant, and damages for the detention thereof, and judgment shall be given accordingly.

See Municipal Court Acts, pp. 519, 521, *infra*.

Act of February 19, 1895, sec. 19 (28 Stat. L., pt. 1, p. 668).

SEC. 19. JUDGMENT FOR DEFENDANT.—If the issue be found for the defendant, or the plaintiff shall dismiss or fail to prosecute his suit, the judgment shall be that the goods, if delivered to the plaintiff, be returned to the defendant, with damages for their detention, or, on

failure, that the defendant recover from the plaintiff and his surety the damages sustained by him, to be assessed by the justice.

See Municipal Court Acts, pp. 519, 521, *infra*.

Act of February 19, 1895, sec. 20 (28 Stat. L., pt. 1, p. 668).

SEC. 20. FORCIBLE ENTRY AND DETAINER.—Whenever any person shall forcibly enter and detain any real property, or shall unlawfully, but without force, enter and unlawfully and forcibly detain the same; or whenever any tenant shall unlawfully detain possession of the property leased to him, after his tenancy therein has expired; or any mortgagor or grantor in a mortgage or deed of trust to secure a debt shall unlawfully detain the possession of the real property conveyed, after a sale thereof under such deed of trust or a foreclosure of the mortgage, or any person claiming under such mortgage or grantor, after the date of the mortgage or deed of trust, shall so detain the same; or a judgment debtor or any person claiming under him, since the date of the judgment, shall so detain possession of real property, after a sale thereof under an execution issued on such judgment, it shall be lawful for the municipal court, on complaint under oath, verified by the person aggrieved by said unlawful detention or by his agent or attorney, having knowledge of the facts, to issue a summons to the party complained of to appear and show cause why judgment should not be given against him for the restitution of the possession.

See sections 851, 1225, 1232.

Act of April 19, 1920, 41 Stat. L., pt. 1, p. 555, repealing 31 Stat. L., p. 1189.

Section 684, R. S. D. C., Comp. St. D. C., p. 317, sec. 8.

"The complaint should be sufficient to advise the tenant of the breach which the landlord claims gives him a right to recover possession of the property, and if the complaint states only one ground, the landlord must be confined to that ground on appeal." *Davis v. Taylor*, 51 App. D. C. 97 (1921); 49 W. L. R. 759.

Construing original section 20, see:

Green v. McIntire, 42 App. D. C. 250 (1914); 42 W. L. R. 403, holding code provision applicable, although title is claimed under instrument executed prior to adoption of code.

Quære: Whether landlord can recover damages for loss of rental of entire building when tenant leases only a part thereof. *Desio v. Hutchinson*, 36 App. 68 (1910); 38 W. L. R. 813. Such action, however, can not be maintained under section 20. *Ib.*

As to supersedeas bond on appeal, see *Dowling v. Buckley*, 27 App. D. C. 205 (1906); 34 W. L. R. 286, quoting *Brown v. Slater*, 23 App. D. C. 51 (1904); 32 W. L. R. 18.

See *Loring v. Bartlett*, 4 App. 1 (1894); 22 W. L. R. 398, construing sections 680, 681, and 684, R. S. D. C.; also *Willis v. Trust Co.*, 169 U. S. 295 (1898), reversing 6 App. D. C. 375, holding that summary proceedings under section 684, R. S. D. C., can not be maintained unless conventional relation of landlord and tenant exists between the parties.

SEC. 21. SUMMONS.—The summons shall be served seven days, exclusive of Sundays and legal holidays, before the day fixed for the trial of the action. If the defendant has left the District of Columbia, or can not be found, said summons may be served by delivering a copy thereof to the tenant, or by leaving the same with some person above the age of sixteen years residing on or in possession of the premises sought to be recovered, and if no one be in actual possession of said premises, or residing thereon, by posting a copy of said summons on the premises where it may be conveniently read.

See section 1223.

Section 685, R. S. D. C., Comp. Stat. D. C., p. 317, sec. 9.

Service of summons by leaving a copy with a person over 16 years of age in possession of the premises and a return to that effect by the marshal was a substantial compliance with section 21. *Bliss v. Duncan*, 44 App. 93 (1915); 43 W. L. R. 709. Cf. *Settlemyer v. Sullivan*, 97 U. S. 444 (1879).

SEC. 22. JUDGMENT.—If upon the trial it appears that the plaintiff is entitled to the possession of the premises, judgment and execution for the possession shall be awarded in his favor, with costs; if the plaintiff becomes nonsuit or fails to prove his right to the possession, the defendant shall have judgment and execution for his costs.

Section 686, R. S. D. C., Comp. Stat. D. C., p. 317, sec. 10.

SEC. 23. PLEA OF TITLE.—If upon the trial the defendant pleads title to the premises, in himself or in another under whom he claims, setting forth the nature of said title, under oath, and shall enter into an undertaking, with sufficient surety, to be approved by the justice, to pay all intervening damages and costs and reasonable intervening rent for the premises, the justice shall certify the proceedings to the supreme court of the District of Columbia, and the same shall be further continued in said court according to its rules.

Section 687, R. S. D. C., Comp. Stat. D. C., p. 317, sec. 11.

McFarlane v. Kirby, 28 App. D. C. 391 (1906); 35 W. L. R. 23.

Brown v. Slater, 23 App. 51 (1903); 32 W. L. R. 18.

SEC. 24. JUDGMENT NOT A BAR.—A judgment, either before the justice or in the supreme court, upon appeal in this proceeding, shall not be a bar to any after action brought by either party or conclude any question of title between them, where title is not pleaded by the defendants as aforesaid.

Brown v. Slater, 23 App. D. C. 51 (1903); 32 W. L. R. 18.

SEC. 25. WITNESSES.—Justices of the peace shall have power to compel the attendance of witnesses from any part of the District of Columbia by attachment and to punish them for disobedience, as well as to punish anyone for disorder or contempt committed in their presence, by fine not exceeding ten dollars or imprisonment not exceeding ten days.

SEC. 26. NONRESIDENT WITNESSES.—Where the testimony of non-resident witnesses is required by either party the justice may, upon motion designating the names of such witnesses, appoint an examiner to take such testimony, to whom he shall issue a commission; and said testimony shall be taken on written interrogatories and cross-interrogatories, which written interrogatories shall be filed with said justice at least three days before the issue of such commission: *Provided*, That such commission shall not issue unless the party or *his agent or attorney* applying therefor file his affidavit, setting forth that he believes that the testimony of said witnesses is material to the issue in said suit and that the motion is not made for the purpose of delay.

See section 1060.

Hutchins v. Hutchins, 41 App. D. C. 367 (1914); 42 W. L. R. 24.

32 Stat. L. pt. 1, p. 521.

SEC. 27. DEATH OF JUSTICE.—In case of the death, or *inability to act* of any justice or the expiration of his commission after judgment rendered by him and before execution is issued thereon, any

other justice, upon a copy of said judgment being filed with him, may issue execution thereon, which shall be returned to the justice issuing the same.

32 Stat. L., pt. 1, p. 521.

SEC. 28. SATISFACTION OF JUDGMENT.—No judgment or execution shall be recorded as satisfied without the receipt of the plaintiff or his attorney annexed thereto.

SEC. 29. DOCKETING JUDGMENT IN SUPREME COURT.—After recovering a judgment for twenty dollars or more, exclusive of costs, before a justice of the peace, the judgment creditor may, when execution is returned "No personal property found whereon to levy," file in the clerk's office of the supreme court of the District a certified copy of said judgment, which shall be docketed in the docket of law causes in said office in the same manner as appeals from justices are there docketed; and when it is docketed the force and effect of the judgment for all purposes shall be the same as if it had been a judgment of the said supreme court.

See section 12.

32 Stat. L., pt. 1, p. 521.

Section 1022 R. S. D. C., Comp. Stat. D. C. p. 312, sec. 35.

Hooper v. Supplee Hardware Co., 39 App. 596 (1912); 40 W. L. R. 678.

Supreme Court may revive judgment so filed by scire facias. Green v. Mann, 19 App. 243 (1902); 30 W. L. R. 57.

SEC. 30. APPEAL.—Where the debt or demand or the value of personal property claimed exceeds five dollars, and in actions for the recovery of possession of real estate, as aforesaid, either party who may think himself aggrieved by the judgment or other final order of a justice of the peace may appeal to the supreme court of the District; such appeal to be prayed within six days after the entering of the judgment.

See Municipal Court Acts, pp. 519, 521, *infra*.

As to construction of section, see:

Robison v. W. R. E. Co., 49 App. 43 (1919); 47 W. L. R. 331.

Fowler v. Quigley, 38 App. 214 (1912); 40 W. L. R. 331.

Dowling v. Buckley, 27 App. D. C. 205 (1906); 34 W. L. R. 286.

U. S. ex rel. Robertson v. Barnard, 24 App. 8 (1904); 32 W. L. R. 458.

Schrot v. Schoenfeld, 23 App. D. C. 421 (1904); 32 W. L. R. 230.

Robertson v. Southerland, 22 App. D. C. 595 (1903); 31 W. L. R. 733.

Key v. Roberts, 20 App. D. C. 391 (1902); 30 W. L. R. 436, cited in 189 U. S. 85.

Groff v. Miller, 20 App. 353 (1902); 30 W. L. R. 434.

SEC. 31. UNDERTAKING.—No appeal shall be allowed unless the appellant, with sufficient surety, approved by the justice, shall enter into an undertaking to satisfy and pay whatever final judgment may be recovered in the appellate court, and agree that such judgment may be entered against principal and sureties. Such undertaking must be given within six days, exclusive of Sundays and legal holidays, after the entry of judgment. And where said undertaking has been given the justice shall immediately file the original papers, and a copy of his docket entries, in the office of the clerk of the supreme court, and notify the appellant or his attorney thereof.

See Municipal Court Acts, pp. 519, 521, *infra*.

Sections 1028, 1029, R. S. D. C., Comp. Stat. D. C. p. 313, secs. 41, 42.

32 Stat. L. pt. 1, p. 521, adding the words "or his attorney."

As to time within which bond must be filed, see *Knabe v. Terrell & Little*, 52 App. 5 (1922); 50 W. L. R. 312.

As to notice of application for approval of bond required by rules, see *Monahan v. Murray*, 50 App. D. C. 134 (1920); 48 W. L. R. 788, citing with approval *Fowler v. Quigley*, 38 App. D. C. 214; 40 W. L. R. 6; *Beale v. Cox*, 14 App. D. C. 368; *Mulvihill v. Clabaugh*, 21 App. D. C. 440. See also U. S. ex rel. *McKinley*, 41 App. D. C. 7, *infra*.

Bond submitted November 9 on judgment rendered November 1 held to be within time limit, one Sunday and two half holidays intervening. U. S. ex rel. *McKinley v. Bundy*, 41 App. D. C. 7 (1913), citing *Fowler v. Quigley*, *supra*.

As to necessity of notification by clerk, see *Swenk v. Nichols*, 39 App. D. C. 350 (1912); 40 W. L. R. 826.

One surety sufficient. *Simpson v. Guiseppe*, 35 App. D. C. 97 (1910); 38 W. L. R. 250, denying effect of dictum in *Dowling v. Buckley*, 27 App. D. C. 208; 34 W. L. R. 286.

Bundy v. U. S. ex rel. Darling, 25 App. D. C. 459 (1905); 23 W. L. R. 434.

Schrot v. Schoenfeld, 23 App. D. C. 421 (1904); 32 W. L. R. 230.

Mandamus lies to compel justice to pass on sufficiency of appeal bond. *Church v. U. S. ex rel. Fidelity, etc., Co.*, 13 App. 264 (1898); 26 W. L. R. 676.

As to distinction between undertaking and bond, see *Tenney v. Taylor*, 1 App. D. C. 223 (1893); 21 W. L. R. 649.

SEC. 32. PRACTICE.—The practice and forms of proceeding in trials before justices and in trials of appeals from justices, so far as not herein directed, shall be governed by the rules of said supreme court.

SEC. 33. CLAIMANT OF PROPERTY LEVIED ON.—When personal property taken on execution *or other process* issued by a justice of the peace is claimed by a person other than the defendant therein, or is claimed by the defendant to be property exempt from execution, and such claimant shall give notice, in writing, to the marshal of his claim, or the defendant shall give notice, in writing, that the property is exempt, the marshal shall notify the plaintiff of such claim and return said notice to the justice who issued the execution, and a trial of said right of property, or said question of exemption, shall be had before said justice.

32 Stat. L. pt. 1, p. 521.

Act of February 19, 1895, secs. 23, 25 (28 Stat. L. 668).

This section "provides summary statutory method, unknown to the common law, of determining the right of property and restoring possession thereof to the rightful owner. * * * It makes no provision for the recovery of damages." *Tribby v. O'Neal*, 39 App. 467 (1912); 41 W. L. R. 39. A proceeding under this section is no bar to subsequent action for damages. *Ib.*

Person in possession of property under lien may claim benefit of section and does not waive his right to maintain action thereunder by becoming purchaser at marshal's sale. *Brown v. Petersen*, 25 App. D. C. 359 (1905); 33 W. L. R. 310.

U. S. ex rel. *Robertson v. Barnard*, 24 App. 8 (1904); 32 W. L. R. 458.

See *Bond v. Carter Hardware Co.*, 15 App. 72 (1899); 27 W. L. R. 450, construing 28 Stat. L. 668.

SEC. 34. The case made by such claim shall be entered on the justice's docket as an action by the claimant or the defendant against the plaintiff and tried in the same manner as other cases before justices of the peace.

Act of February 19, 1895, secs. 26, 27 (28 Stat. L. 668).

Tribby v. O'Neal, 39 App. 467 (1912); see sec. 33 *supra*.

U. S. ex rel. *Robertson v. Barnard*, 24 App. 8; see sec. 33 *supra*.

SEC. 35. In case the property shall appear to belong to the claimant or to be exempt from such process, judgment shall be entered against the plaintiff for costs, and the property levied upon shall be

released. If the property shall not appear to belong to the claimant or to be exempt, as aforesaid, judgment shall be entered against said claimant or the defendant, as the case may be, for costs, including additional costs occasioned by the delay in the execution of the writ. An appeal may be taken from the judgment as in other cases.

Original section repealed by act of April 19, 1920 (41 Stat. L. p. 1, 555), and new section of like number substituted.

Act of February 19, 1895, sec. 27 (28 Stat. L. 668).

See cases cited under section 34 supra.

SEC. 36. In case of an appeal the marshal shall retain the property unless the claimant or the defendant in the execution or his agent shall enter into an undertaking, with sufficient surety, to be approved by the justice, for the delivery of such property to the marshal, if the judgment of the court shall be against the party entering into such undertaking; and said undertaking shall be returned to said supreme court, and it may give judgment thereon.

SEC. 37. Nothing herein contained shall prevent a claimant other than the defendant from bringing an action of replevin against the officer levying upon the property claimed as aforesaid.

SEC. 38. DOCKET.—Each justice of the peace is required to keep a docket, in which he shall enter from day to day concurrently with the respective proceedings—

First. The title of each action.

Second. The date of the writ issued and the time of its return, the fact of affidavits being filed, with the name of any affiant.

Third. The appearance of the parties.

Fourth. The nature of the pleadings in brief.

Fifth. The names of witnesses sworn, and at whose request.

Sixth. The judgment of the justice and the items of cost.

Seventh. The appeal, if one is taken, by which party taken, the undertaking and the time of giving the same.

Eighth. The satisfaction of the judgment and the date thereof.

And it shall be his duty to furnish a copy of any judgment rendered by him when required by either party to the action. If he shall omit to keep such docket or be guilty of any other negligence or omission whereby the plaintiff, having obtained a judgment before him, shall lose his debt, the justice shall pay and satisfy to the plaintiff the debt, interest, and costs so lost, to be recovered in an action of debt against said justice and his surety or sureties, with any additional interest that may have accrued.

SEC. 39. RETIRING JUSTICES, AND REMOVAL, RESIGNATION, AND DEATH.—It shall be the duty of every justice of the peace hereafter appointed, upon his resignation or removal from office, or the expiration of his commission, and in case of his death, it shall be the duty of his executor or administrator, if such dockets or papers have come to his possession or are within his control, to deliver all dockets and all original papers in cases in the possession of such justice of the peace at the time of his resignation, removal, expiration of commission, or death, to his successor in office.

Upon failure of any person to deliver such dockets and papers as in this section provided, he shall forfeit to the United States the sum of five hundred dollars, to be recovered as other penalties are recovered. And every justice of the peace hereafter appointed shall have

the same jurisdiction to issue executions and attachments upon all unsatisfied judgments in dockets in his possession, and certify copies thereof and copies of papers on file with him, as in cases brought before and judgments rendered by him. And the successor of a deceased justice of the peace shall have jurisdiction to try causes pending before the deceased at the time of his death: *Provided*, That no action pending before a justice of the peace at the time this code went into effect shall abate, but such action shall not be tried or otherwise disposed of by the justice to whom it may be assigned until he has caused at least two days' notice of the time and place of trial to be served upon each party to the suit, or his attorney, or the parties or their attorneys agree in writing upon a time and place of trial.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 521), repealing 31 Stat. L., p. 1189.

SEC. 40. REMOVAL FROM OFFICE.—The supreme court of the District shall have power to remove justices of the peace from office, after due notice and an opportunity given them to be heard in their defense, for incompetency, habitual drunkenness, corruption, or other misconduct in office.

SEC. 41. PROCESS, SERVICE OF.—The office of constable is hereby abolished, and all process issued by a justice of the peace shall be served by the United States marshal for the District of Columbia, or, if he is disqualified, by the coroner, and the fees for such service shall be as prescribed by rule of the supreme court of the District of Columbia.

SUPERSEDEAS

On all judgments rendered by a justice of the peace, except as hereinafter provided, stay of execution may be had upon good and sufficient security being entered by a person who may be at the time the owner of sufficient real property located in the District, above all liabilities and exemptions, to secure the debt, costs, and interest.

In such cases stay of execution shall be entered as follows:

For the sum of five dollars, and not exceeding twenty dollars, one month.

For all sums over twenty dollars, and not exceeding forty dollars, two months.

For all sums over forty dollars, and not exceeding seventy-five dollars, four months.

For all sums exceeding seventy-five dollars, six months.

There shall be no stay of execution on any judgment for the wages of a servant or common laborer, nor upon any judgment for a less sum than five dollars.

Sections 1023-1025 R. S. D. C., Comp. Stat. D. C. p. 313, secs. 36-38.

SUBCHAPTER TWO

THE POLICE COURT

SEC. 42. CONSTITUTION.—There shall continue to be a police court in the District as at present constituted, consisting of two judges learned in the law, appointed by the President, by and with the advice and consent of the Senate, for the term of six years, or until their

successors are appointed, who shall each receive a salary of three thousand dollars per annum. The said judges shall hold separate sessions and may carry on the business of said court separately and simultaneously, and are empowered to make rules for the apportionment of the business between them, and the act of each of said judges respecting the business of said court shall be deemed and taken to be the acts of said court. Each judge when appointed shall take the oath prescribed for judges of courts of the United States.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 522), repealing 31 Stat. L., p. 1189.

SEC. 43. JURISDICTION.—The said court shall have original jurisdiction concurrently with the supreme court of the District, except where otherwise expressly herein provided, of all crimes and offenses committed in the said District not capital or otherwise infamous and not punishable by imprisonment in the penitentiary, except libel, conspiracy, and violation of the post-office and pension laws of the United States; and also of all offenses against municipal ordinances and regulations in force in the District of Columbia. The said court shall also have power to examine and commit or hold to bail, either for trial or further examination, in all cases, whether cognizable therein or in the supreme court of the District.

R. S. D. C. sec. 1049; Comp. Stat. D. C. 478, sec. 9.

See act of July 16, 1912 (37 Stat. L. pt. 1, p. 192) *infra* p. 498, conferring concurrent jurisdiction on police court and supreme court of affrays, keeping of bawdy or disorderly houses, and threats to do bodily harm.

Prosecution for first offense under national prohibition act may be in the police court by way of information. *Cleveland v. Mattingly*, 52 App. D. C. 374 (1922); 51 W. L. R. 212.

The police court is a "proper court of the United States" within the meaning of the food and drug act (34 Stat. L. 768). *Huyler's v. Houston*, 41 App. D. C. 452 (1914); 42 W. L. R. 200.

Offenses punishable by imprisonment in the penitentiary are exclusively within the jurisdiction of the supreme court. *Palmer v. Lenovitz*, 35 App. D. C. 303 (1910); 38 W. L. R. 474.

The police court is not a "court of the United States" within the meaning of section 1042 of the Revised Statutes of the United States. *U. S. v. Mills*, 11 App. D. C. 500 (1897); 26 W. L. R. 89.

For collation of acts of Congress relative to establishment of the courts of the District of Columbia, see *Gassenheimer v. D. C.*, 6 App. 108 (1895); 23 W. L. R. 257.

As to right of trial by jury in police court, see *Callan v. Wilson*, 127 U. S. 540 (1888).

SEC. 44. That prosecutions in the police court shall be on information by the proper prosecuting officer. In all prosecutions within the jurisdiction of said court in which, according to the Constitution of the United States, the accused would be entitled to a jury trial, the trial shall be by jury, unless the accused shall in open court expressly waive such trial by jury and request to be tried by the judge, in which case the trial shall be by such judge, and the judgment and sentence shall have the same force and effect in all respects as if the same had been entered and pronounced upon the verdict of a jury.

In all cases where the accused would not by force of the Constitution of the United States be entitled to a trial by jury, the trial shall be by the court without a jury, unless in such of said last-named cases wherein the fine or penalty may be fifty dollars or more, or imprisonment as punishment for the offense may be thirty days or more, the accused shall demand a trial by jury, in which case the trial shall be

by jury. In all cases where the said court shall impose a fine it may, in default of the payment of the fine imposed, commit the defendant for such a term as the court thinks right and proper, not to exceed one year.

See section 934.

Act of July 23, 1892 (27 Stat. L. 261).

See cases cited under section 43, *supra*.

Hartranft v. Mulloony, 43 App. 44 (1915); 43 W. L. R. 35 (writ of error dismissed, 247 U. S. 295), citing with approval *Huyler's v. Houston*, 41 App. D. C. 452 (see sec. 43, *supra*).

Quare: Whether there is an absolute right to trial by jury in police court for violation of vagrancy statute (see p. 462, *infra*), *Fleming v. D. C.*, 34 App. D. C. 5 (1909); 37 W. L. R. 768.

Section 934, District of Columbia Code, relative to cumulative sentences, does not apply to sentences imposed upon different informations, after separate convictions at different times. *Harris v. Lang*, 27 App. D. C. 84 (1906); 34 W. L. R. 176. Nor does it apply to a sentence to pay a pecuniary fine, followed by imprisonment in default of payment, as provided in code section 44. *Ib.* See also *Harris v. Nixon*, 27 App. D. C. (1906) 94; 34 W. L. R. 179, certiorari denied, 201 U. S. 645.

One charged with the violation of a municipal ordinance, the maximum penalty for which is a fine not exceeding \$40, is not entitled to a trial by jury. *Bowles v. D. C.*, 22 App. D. C. 321 (1903); 31 W. L. R. 539.

SEC. 45. JURY.—The jury for service in said court shall consist of twelve men, who shall have the legal qualifications necessary for jurors in the supreme court of the District, and shall receive a like compensation for their services, and such jurors shall be drawn and selected under and in pursuance of the laws concerning the drawing and selection of jurors for service in said court. The term of service of jurors drawn for service in said police court shall be for three successive monthly terms of said court and, in any case on trial at the expiration of such time, until a verdict shall have been rendered or the jury shall be discharged. The said jury terms shall begin on the first Monday in January, the first Monday in April, the first Monday in July, and the first Monday in October of each year, and shall terminate, subject to the foregoing provisions, on the last Saturday of each of said jury terms. When at any term of said court it shall happen that in a pending trial no verdict shall be found, nor the jury otherwise discharged before the next succeeding term of the court, the court shall proceed with the trial by the same jury, as if said term had not commenced.

SEC. 46. At least ten days before the term of service of said jurors shall begin, as herein provided for, such jurors shall be drawn as hereinbefore directed, and at least twenty-six names so drawn shall be certified by the clerk of the supreme court of said District to the said police court for service as jurors for the then ensuing term. Deficiencies in any panel of any such jury may be filled according to the law applicable to jurors in said supreme court, and for this purpose either judge of said police court shall possess all the powers of a judge of said supreme court and of said court sitting as a special term. No person shall be eligible for service on a jury in said police court for more than one jury term in any period of twelve consecutive months, but no verdict shall be set aside on such ground unless objection shall be made before the trial begins. Service on such jury shall not render any person exempt, ineligible, or disqualified for service as a juror in said supreme court, except during his term of

actual service in said police court. The marshal of said District, by himself or deputy, shall have charge of said jury, and may appoint a deputy for that purpose, who shall be paid three dollars a day while so employed.

SEC. 47. JUDGMENT TO BE FINAL.—In all cases tried before said court the judgment of the court shall be final, except as hereinafter provided.

SEC. 48. POWERS.—The said court shall have power to issue process for the arrest of persons against whom information may be filed or complaint under oath made and to compel the attendance of witnesses; to punish contempts by fine not exceeding twenty dollars and imprisonment for not more than forty-eight hours, or either, and to enforce any of its judgments by fine or imprisonment, or both, and to make such rules and regulations as may be deemed necessary and proper for conducting business in said court. In all cases where the said court shall impose a fine it may, in default of the payment of the fine imposed, commit the defendant for such a term as the court thinks right and proper, not to exceed one year.

That every person charged with an offense triable in the police court of the District of Columbia may give security for his appearance for trial or for further hearing, either by giving bond to the satisfaction of the court or by depositing money as collateral security with the appropriate officer at the said police court or the station keeper of the police precinct within which such person may be apprehended. And whenever any sum of money shall be deposited as collateral security as hereby provided it shall remain, in contemplation of law, the property of the person depositing it until duly forfeited by the court; and when forfeited it shall be, in contemplation of law, the property of the United States of America or of the District of Columbia, according as the charge against the person depositing it is instituted on behalf of the said United States or of the said District; and every person receiving any sum of money deposited as hereby provided shall be deemed in law the agent of the person depositing the same or of the said United States or the said District, as the case may be, for all purposes of properly preserving and accounting for such money. And all fines payable and paid under judgment of the said police court shall, upon their payment, immediately become, in contemplation of law, the property of the said United States or the said District, according to the charge upon which such fine may be adjudged; and the person receiving any such fine shall be deemed in law the agent of the said United States or the said District as aforesaid, as the case may be; and any person, being an agent as hereinbefore contemplated and defined, who shall wrongfully convert to his own use any money received by him as hereinbefore provided shall be deemed guilty of embezzlement, and upon conviction thereof be punished by a fine not exceeding five thousand dollars or by imprisonment not exceeding five years, or both: *Provided*, That nothing herein contained shall affect the ultimate rights under existing law of the Washington Humane Society, or the policemen's fund (by whatever name the same may be called or known), or the firemen's relief fund, of the District of Columbia, in or to any fines or forfeitures paid and collected in the said police court.

See *Bowles v. D. C.*, 22 App. D. C. 321 (sec. 44 supra).

SEC. 49. SEAL.—The said court shall have a seal, and each of the judges shall have power to take the acknowledgment of deeds and to administer oaths and affirmations to public officers.

SEC. 50. TERMS.—The said court shall hold a term on the first Monday of every month, and continue the same from day to day as long as it may be necessary for the transaction of its business.

Harris v. Nixon, 27 App. D. C. 94; 34 W. L. R. 179 (certiorari Supreme Court U. S. refused, 201 U. S. 645). (See sec. 44 supra.)

SEC. 51. DISABILITY OF JUDGE.—In cases of sickness, absence, disability, expiration of the term of service of or death of either of the judges of said court, any one of the justices of the supreme court of the District of Columbia may designate one of the justices of the peace to discharge the duties of said police judge until such disability be removed or vacancy filled. The justice so designated shall take the same oath prescribed for the judge of the police court.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 522), repealing 31 Stat. L., p. 1189.

SEC. 52. CLERK.—The court shall have power to appoint a clerk, at a salary of two thousand dollars per annum, who shall hold his office at the pleasure of the court, and he shall give bond with surety and take the oath of office prescribed by law for clerks of the district courts of the United States, and said clerk shall charge no fee for any service rendered by him.

SEC. 53. DEPUTIES.—The said clerk may appoint four deputies, with the approval of the court, if the business of the court requires it, to be paid, each, such compensation as may be allowed by the court, not exceeding one thousand five hundred dollars per annum as to two of such deputies and twelve hundred dollars as to the other two.

SEC. 54. The said clerk and deputy clerks shall have power to administer oaths and affirmations.

SEC. 55. BAILIFFS AND OTHER OFFICERS.—The said court may appoint not exceeding three bailiffs, who shall receive for their services nine hundred and thirty-nine dollars each per annum, on the certificate of service by the court. Said bailiffs may act as deputies to the marshal for service of process issued by the court. The said court may also appoint a doorkeeper at a salary of five hundred and forty dollars per annum, an engineer at a salary of nine hundred dollars per annum, and a janitor at a salary of four hundred and fifty dollars per annum.

SEC. 56. SALARIES, HOW PAID.—The salaries of the judges, clerk, deputy clerks, bailiffs, deputy marshal, doorkeeper, engineer, and janitor of the said court shall be paid as other salaries of the District of Columbia, from appropriations made by Congress as provided in the Act of June eleventh, eighteen hundred and seventy-eight.

SEC. 57. EXECUTIONS AND FORFEITED RECOGNIZANCES.—The said court shall have power to issue execution on all forfeited recognizances, upon motion of the proper prosecuting officer, and all writs of fieri facias or other writs of execution on judgments issued by said court shall be directed to and executed by the marshal of the District.

See section 1214.

See Juvenile Court Act, p. 509, *infra*.

Section 1020 R. S. U. S., conferring authority on court to remit penalty of forfeited recognizance in certain cases; construed in *U. S. v. Von Jenny*, 39 App. D. C. 377 (1912); 41 W. L. R. 36.

SEC. 58. Fines to be paid to the clerk of the police court: All fines, penalties, costs and forfeitures imposed or taxed by the police court shall be paid to the clerk of said court, either with or without process or on process ordered by the court. The clerk of the police court shall, on the first secular day of each week, deposit with the collector of taxes the total amount of all fines, penalties, costs and forfeitures collected by him during the week next preceding the date of such deposit, to be covered into the Treasury to the credit of the District of Columbia, subject to the requirements of the provisions of the Act of June eleventh, eighteen hundred and ninety-six, to meet any deficiency in the police fund or the firemen's relief fund. The said clerk shall render an itemized statement of each deposit aforesaid upon such forms and in such manner as shall be prescribed by the auditor of the District of Columbia.

SEC. 59. ACCOUNTS, HOW AUDITED.—It shall be the duty of the auditor of the District of Columbia, and he is hereby required, to audit the accounts of the clerk of the police court at the end of every quarter and to make prompt report thereof in writing to the Commissioners of the District of Columbia. In order to enable the auditor of the District to perform the duty hereby imposed upon him, he shall have free access to all books, papers, and records of the said court.

SUBCHAPTER THREE

SUPREME COURT OF THE DISTRICT OF COLUMBIA

SEC. 60. CONSTITUTION.—The supreme court of the District shall continue as at present constituted, and consist of a chief justice and five associate justices, appointed by the President of the United States, by and with the advice and consent of the Senate, and holding their offices during good behavior. The chief justice and each associate justice shall receive a salary of five thousand dollars per annum, which amounts shall be paid in monthly installments, out of the Treasury of the United States, and one-half thereof shall be charged against the revenues of the District of Columbia.

Act of March 3, 1863 (12 Stat. L. p. 762).

Comp. Stat. D. C. p. 293, secs. 1-4, R. S. D. C. p. 90, secs. 750 et seq.

See 32 Stat. L. 825; 40 Stat. L. 1157, increasing salary of judges.

See Act of Sept. 14, 1922 (42 Stat. L. pt. 1, p. 839), relative to assignment of justice from Court of Customs Appeals.

SEC. 61. JURISDICTION.—The said court shall possess the same powers and exercise the same jurisdiction as the circuit and district courts of the United States, and shall be deemed a court of the United States, and shall also have and exercise all the jurisdiction possessed and exercised by the supreme court of the District of Columbia *under the Act of Congress approved March third, eighteen hundred and sixty-three, creating that court, and* at the date of the passage of this code.

32 Stat. L. pt. 1, p. 522.

Act of March 3, 1863 (12 Stat. L. p. 762).

R. S. D. C., secs. 760, 761; Comp. Stat. D. C. p. 295, secs. 19, 20.

Supreme court has jurisdiction to try conspiracy entered into in the District of Columbia, although the overt act is shown to have been committed in another jurisdiction or even in a foreign country. *Hyde v. Shine*, 199 U. S. 61 (1905).

The supreme court of the District of Columbia is a "court of the United States" within the meaning of section 1014 of the Revised Statutes of the United States. *Benson v. Henkel*, 198 U. S. 1 (1905).

"The supreme court of the District of Columbia is one of the inferior courts whose creation is authorized by section 1 of Article III of the Constitution, and possesses the same powers and exercises the same jurisdiction as the circuit and district courts of the United States." In *re Macfarland*, 30 App. D. C. 365 (1908); 36 W. L. R. 114, appeal dismissed 215 U. S. 614.

Supreme court has jurisdiction of action for negligence causing death where the act complained of was committed in the District, notwithstanding the fact that death occurred elsewhere. *Moore v. Pywell*, 29 App. D. C. 312 (1907); 35 W. L. R. 225. Supreme court, D. C., must take judicial notice of the laws of the States. *Ib.*

Circuit branch of supreme court has jurisdiction to entertain suit for violation of safety appliance act. *U. S. v. Balt. & O. R. Co.*, 26 App. D. C. 581 (1906); 34 W. L. R. 143.

The supreme court, D. C., is a "court of the United States" within the meaning of section 725 R. S. U. S., and as such has power to punish for contempt of court. *Moss v. U. S.*, 23 App. D. C. 475 (1904); 32 W. L. R. 342.

The supreme court, D. C., is without jurisdiction to inquire into the grounds of the detention of persons unlawfully restrained of their liberty beyond the District of Columbia. *McGowan v. Moody*, 22 App. D. C. 148 (1903); 31 W. L. R. 371.

SEC. 62. POWERS OF JUSTICES.—The justices of said court, in addition to the powers and jurisdiction possessed and exercised by them as such, *under said act of March third, eighteen hundred and sixty-three, and at the date of the adoption of this code*, shall severally possess the powers and exercise the jurisdiction possessed and exercised by the judges of the circuit and district courts of the United States.

32 Stat. L. pt. 1, p. 522.

R. S. D. C., secs. 760, 761; Comp. Stat. D. C. p. 295, secs. 19, 20.

The court of appeals has jurisdiction to review matters resting in the discretion of the trial justices. *Billings v. Field*, 36 App. D. C. 16 (1910), citing with approval *Degge v. Hitchcock*, 35 App. D. C. 218 (1910); 38 W. L. R. 393 (affirmed in 229 U. S. 162).

Referred to but not construed in *U. S. v. Balt. & O. R. Co.*, 26 App. D. C. 581 (1906), see sec. 61 *supra*.

As to power of justice to sentence for contempt for failure of attorney appearing as a witness to disclose confidential communications from a client. see *Elliott v. U. S.*, 23 App. D. C. 456 (1904); 32 W. L. R. 293.

SEC. 63. TERMS.—The said court shall hold a general term and special terms. The general term shall be held by at least three justices and each special term by a single justice.

See section 65 (as amended by 41 Stat. L. 555).

U. S. v. Balt. & Ohio R. Co., 26 App. D. C. 581 (1906); see sec. 61 *supra*.

R. S. D. C., secs. 753, et seq.; Comp. Stat. D. C. p. 294, secs. 9 et seq.

SEC. 64. The special terms of said court shall be known, respectively, as the circuit court, the equity court, the criminal court, the probate court, and the district court of the United States.

See sec. 65.

U. S. v. Balt. & Ohio R. Co., 26 App. D. C. 581; see sec. 61 *supra*.

SEC. 65. The general term of said court shall be open at all times for the transaction of business; and said court, by orders passed in general term, may regulate the periods of holding the special terms,

fix the number of said terms, and alter the same from time to time, as public convenience may require; may direct as many terms of any of the special terms to be held at the same time as the public business may make necessary; may assign the several justices from time to time to the respective special terms; may establish written rules regulating pleading, practice and procedure, and by said rules make such modifications in the forms of pleading and methods of practice and procedure prescribed by existing law as may be deemed necessary or desirable to render more simple; effective, inexpensive, and expeditious the remedy in all suits, actions, and proceedings: *Provided*, That said rules shall not become effective until thirty days after the date when they are adopted and spread upon the minutes of the said general term: *And provided further*, That said court in general term shall not have power to make or establish rules regulating pleading, practice, or procedure in equity which are inconsistent with the rules in equity heretofore or hereafter adopted by the Supreme Court of the United States; may appoint a clerk, an auditor, and also a crier and a messenger for each court in special term, and all other officers of the court necessary for the due administration of justice, with the exception of all officers and employees in any manner connected with the probate term, and also United States commissioners; may hear charges of misconduct against any judge of the municipal court and remove him from office for cause shown; may admit persons to the bar of said court and censure, suspend, or expel them; and may pass all other orders not inconsistent with existing laws which may be necessary to the effective administration of justice in said court, but said court shall not hear any cause in general term: *Provided*, That the general term may assign more than one justice to a special term for the trial of a given case.

Act of April 19, 1920 (41 Stat. L. 555), repealing 31 Stat. L. p. 1189, as amended by 32 Stat. L. pt. 1, p. 552.

SEC. 66. All causes in said court shall be heard and determined in special term. And the several terms are declared to be terms of the supreme court, and the judgments, decrees, sentences, orders, proceedings, and acts of said several terms shall be deemed judgments, decrees, sentences, orders, proceedings, and acts of the supreme court.

U. S. v. Balt. & O. R. Co., 26 App. D. C. 581; see sec. 61 supra.

SEC. 67. By mutual consent and arrangement between justices, causes may be certified by any justice holding a special term to any justice holding any other special term of said court for trial in the latter: *Provided*, That a criminal case can only be certified for trial from one criminal court to another criminal court. In the absence of any justice assigned to a special term, such special term may be presided over and its business conducted by any other justice.

Act of April 19, 1920 (41 Stat. L. 556) repealing original section and substituting new section of like number.

Comp. Stat. D. C., p. 295, secs. 17, 18.

In re Gassenheimer, 24 App. D. C. 312 (1904); 32 W. L. R. 808.

SEC. 68. WRITS.—The said supreme court may, in its appropriate special terms, issue writs of quo warranto, mandamus, prohibition, scire facias, certiorari, injunction, prohibitory and mandatory, ne exeat, and all other writs known in common law and equity practice

that may be necessary to the effective exercise of its jurisdiction. Any justice of said court may issue writs of habeas corpus, to inquire into the cause of detention or to discharge on giving bail.

McGowan v. Moody, 22 App. D. C. 148 (see sec. 61, supra).

SEC. 69. CIRCUIT COURT.—All common-law civil causes shall be tried and determined in the circuit court, except as herein provided.

U. S. v. Balt. & O. R. Co., 26 App. D. C. 588 (see sec. 61, supra).

SEC. 70. TRIAL BY COURT.—Issues of fact in civil causes may be tried and determined by the court without the intervention of a jury whenever the parties or their attorneys of record file with the clerk a stipulation in writing waiving a jury. The finding of the court upon the facts, which may be either general or special, shall have the same effect as the verdict of a jury.

The filing of a motion to quash service of process, and of affidavits in opposition to the motion, does not confer jurisdiction on the court to determine the facts in issue without the filing of a written stipulation as required by this section. Fischer v. Munsey Trust Co., 44 App. D. C. 212 (1915); 43 W. L. R. 820.

Where the facts are submitted to the court for determination, the finding of the court on the facts (which may be either general or special) has the same effect as a verdict of a jury. Goode v. U. S., 44 App. D. C. 162 (1915); 43 W. L. R. 808.

SEC. 71. In such case an exception may be taken to any ruling of the court during the hearing and to such finding on the ground that the evidence was insufficient in law to justify it, and may be stated in a bill of exceptions as in case of a jury trial.

Goode v. U. S., 44 App. D. C. 162 (see sec. 70, supra).

Dudley v. Owen, 31 App. D. C. 177 (1908); 36 W. L. R. 313, affirmed 217 U. S. 488.

SEC. 72. SPECIAL PANEL.—In all cases called for trial in said court in which either party shall desire a struck jury the clerk shall prepare a list of twenty jurors from the jurors in attendance and furnish the same to each of the parties, and it shall be lawful for each party or his counsel to strike off four persons from said list, and the remaining persons shall thereupon be impaneled and sworn as the petit jury in said cause; and if either party or his counsel shall neglect or refuse to strike off from said list the number of persons hereby directed, the clerk may strike off such names, and the remaining twelve jurors shall be sworn and impaneled as aforesaid. Or, instead of the proceeding aforesaid, if it shall not be insisted upon by either party, it shall be lawful for either party to furnish to the clerk a list of the jurors, not exceeding four in number, whom he wishes to be omitted from the panel sworn in the cause, and the clerk in making up said panel shall omit the jurors objected to as aforesaid: *Provided*, That nothing herein contained shall be construed to take away the right of any person to challenge the array or polls of any panel returned: *And provided further*, That nothing herein contained shall affect the right of the parties to have all or any of the jurors examined on their voir dire before the list is prepared to determine their competency to sit in the particular case.

32 Stat. L. pt. 1, p. 523.

Act of Maryland of 1797, ch. 87, sec. 9; Comp. Stat. D. C. p. 307, sec. 37.

SEC. 73. BILL OF EXCEPTIONS.—If, upon a trial of a cause before a jury, an exception be taken, it may be reduced to writing at the time, or it may be entered on the minutes of the justice and afterwards settled in such manner as may be provided by the rules of the court and stated in a bill of exceptions, with so much of the substance of the evidence as may be material to the questions to be raised, and such bill of exceptions need not be sealed, and shall be considered a part of the record in case of an appeal from the final judgment rendered in the case.

See section 83.

32 Stat. L. pt. 1, p. 523.

Section 803, R. S. D. C.; Comp. Stat. D. C., p. 442, sec. 4.

Murphy v. Gould, 39 App. D. C. 363 (1912); 40 W. L. R. 824, certiorari denied, 226 U. S. 613.

An objection not appearing in the bill of exceptions comes too late. *Fields v. U. S.*, 27 App. D. C. 433, 446 (1906); 34 W. L. R. 382, dismissed, 205 U. S. 292.

In the absence of a bill of exceptions it will be presumed on appeal "that the proceedings had in the court below were in all respects regular." *Raymond v. U. S.*, 26 App. D. C. 250 (1905); 34 W. L. R. 562. A motion to dismiss an appeal for failure to file a bill of exceptions will be denied where "the right of appeal is not dependent upon the appearance of a regular bill of exceptions in the transcript of the record." *Ib.*

"In order to warrant an appellate court in determining whether there was error in giving or refusing an instruction to return a verdict, the bill of exceptions must show that all of the evidence has been set forth." *Rockwell v. Capital Traction Co.*, 25 App. D. C. 98 (1905); 33 W. L. R. 338.

A stipulation setting forth an agreed statement of facts on which the case is tried need not be included in a formal bill of exceptions. *Trust Co. v. Walker*, 23 App. D. C. 583 (1904); 32 W. L. R. 348.

"There is no power in this court, by certiorari or otherwise, to correct the imperfections or misstatements that are alleged to exist in the bill of exceptions taken and certified to this court." *Kelly v. Moore*, 22 App. D. C. 1 (1903).

Brown v. Fire Insurance Co., 21 App. D. C. 325 (1903); 31 W. L. R. 206.

"Every reasonable presumption will be indulged in favor of the regularity of a bill of exceptions that the record will permit. But it seems to be the settled practice * * * not to entertain a bill of exceptions which clearly appears from the record to have been settled, etc., after the expiration of the term of the court or of any period beyond which it could not be legally postponed." *Talty v. D. C.*, 20 App. D. C. 489 (1902); 30 W. L. R. 774.

As to the consideration of stipulations of counsel in lieu of bill of exception, see *Frizell v. Murphy*, 19 App. D. C. 440 (1902); 30 W. L. R. 203.

"The purpose of a bill of exceptions * * * is to make that a matter of record which otherwise would not appear on the record. But when the questions raised already sufficiently appear from the pleadings and proceedings of record, no such bill of exceptions is necessary. *Evans v. Humphreys*, 9 App. D. C. 392 (1896); 24 W. L. R. 783.

On a plea of nul tiel record to a scire facias on judgment the record inspected is no part of the proceedings, and a bill of exceptions setting forth the record offered and the ruling thereon to which exception is taken is necessary on appeal. *Lyon v. Ford*, 7 App. D. C. 314 (1895); 23 W. L. R. 838 (citing *Otterback v. Patch*, 5 App. D. C. 69).

"A general exception to a charge, which does not direct the attention of the court to the particular portions of it to which objection is made raises no question for review by an appellate court." *Thomas v. Presbrey*, 5 App. D. C. 217 (1895); 23 W. L. R. 123.

Barbour v. Paige Hotel Co., 2 App. D. C. 174 (1894); 22 W. L. R. 33.

SEC. 74. APPEALS FROM JUSTICES OF THE PEACE.—All appeals from a justice of the peace shall be heard and determined in the circuit court.

See Municipal Court Acts, pp. 519, 521, *infra*.

SEC. 75. In every case of an appeal from a justice of the peace, as soon as the appellant shall have made the deposit for costs required by law, or the rules of the supreme court, or obtained leave from one of the justices or from the court to prosecute his appeal without a deposit, the clerk shall docket the cause, according to its title, for trial before said circuit court, and shall issue a summons for the appellee to appear in said court on or before the tenth day, exclusive of Sundays and legal holidays, after the service of said summons.

32 Stat. L. pt. 1, p. 523.

See Municipal Court Acts, pp. 519, 521, *infra*.

Sec. 774, R. S. D. C.; Comp. Stat. D. C. p. 298, sec. 36.

Swenk v. Nicholls, 39 App. D. C. 350 (1912); 40 W. L. R. 826.

SEC. 76. If the appellant shall fail to prosecute his appeal by making the deposit or obtaining the leave aforesaid within ten days after the approval of the appeal bond, the appellee may, upon making the deposit for costs, have the case docketed and move for affirmance of the judgment of the justice, or he may have a trial of the case upon its merits.

See Municipal Court Acts, pp. 519, 521, *infra*.

SEC. 77. If the first summons for the appellee be returned "not to be found," a second summons of the same kind and tenor shall be issued.

See Municipal Court Acts, pp. 519, 521, *infra*.

SEC. 78. If the appellee shall appear, in obedience to either summons, the case shall stand for trial in such order as the rules of said supreme court shall direct.

See Municipal Court Acts, pp. 519, 521, *infra*.

SEC. 79. If the appellee shall fail to appear, although duly summoned, or two successive writs of summons shall be returned "not to be found," and the appellee shall not appear, the case may then be heard and determined as if he had regularly appeared.

See Municipal Court Acts, pp. 519, 521, *infra*.

Section 777, R. S. D. C.; Comp. Stat. D. C. p. 298, sec. 39.

SEC. 80. On such appeal the circuit court shall, in a summary way, hear the case *de novo* upon the proofs and allegations of the parties, and determine the same according to law and the equity and right of the matter; but either party may demand a trial by jury.

See Municipal Court Acts, pp. 519, 521, *infra*.

[SEC. 81. No appeal from the judgment of any justice of the peace to the supreme court shall be dismissed because the same had not been prayed to the term next after the rendition of such judgment, unless the court shall be satisfied that the defendant had notice of such judgment at least ten days before the sitting of court.]

Repealed; 32 Stat. L. pt. 1, p. 523.

[SEC. 82. In no case appealed from a justice of the peace shall there be any further appeal from the judgment of the circuit court.]

Repealed; 32 Stat. L. pt. 1, p. 523.

SEC. 83. THE CRIMINAL COURT.—The trial of crimes and misdemeanors committed in the District of Columbia shall be in the supreme court of the District of Columbia holding a special term as a criminal court, except such misdemeanors as are within the

jurisdiction of the police court, as to which said court shall have concurrent jurisdiction with said police court. In all trials in said special term exceptions may be taken by the accused to the rulings of the presiding justice and presented in bills of exceptions in the same manner as in the trial of civil cases.

32 Stat. L. pt. 1, p. 523.

See section 73.

Comp. Stat. D. C., p. 296, sec. 23.

U. S. v. Balt. & O. R. Co., 26 App. D. C. 581 (see sec. 61, supra).

SEC. 84. THE DISTRICT COURT.—The said district court shall have and exercise the same powers and jurisdiction as the other district courts of the United States, and such further special jurisdiction as may from time to time be conferred by Congress, and of all proceedings instituted in exercise of the right of eminent domain.

U. S. v. Balt. & O. R. Co., 26 App. D. C. 581 (see sec. 61, supra).

SEC. 85. EQUITY COURT.—The equity court shall have jurisdiction of all causes heretofore cognizable in equity and of all petitions for divorce, except where the relief sought is hereby authorized to be given by the probate court only, and shall have the special powers hereinafter provided. And the practice in said court shall be according to the established course of equity and procedure and the rules established by the said supreme court of the District not inconsistent with law.

U. S. v. Balt. & O. R. Co., 26 App. D. C. 581 (see sec. 61, supra).

SEC. 86. DOWER.—Whenever any person or persons shall hold real estate, by descent or purchase, in the whole of which a widow is entitled to dower, either the widow or any person entitled to said property or an undivided share therein may apply to said court to have the widow's dower therein assigned; and thereupon the court shall appoint three commissioners to lay off and assign said dower, if practicable, the report of said commissioners to be subject to ratification by the court. In all cases of partition between two or more joint tenants or tenants in common of real estate, in the whole of which a widow is entitled to dower, the said dower shall be laid off and assigned, in like manner, before said partition shall be decreed. When an estate of which a woman is dowable is entire, and the dower can not be set off thereout by metes and bounds, it may be assigned by the court as of a third part of the net rents, issues, and profits thereof.

See section 149.

Assignment of dower is condition precedent to partition. *Hasler v. Williams*, 34 App. D. C. 319 (1910); 38 W. L. R. 145.

Baltimore & Potomac R. Co. v. Taylor, 6 App. D. C. 259 (1895); 23 W. L. R. 324.

SEC. 87. Whenever the widow of any tenant in common of real estate shall be entitled to dower in his undivided share of said property, and a partition shall be decreed between his heirs or devisees and the other tenants in common, the said dower shall attach to and may, in like manner, be assigned and laid out in the shares assigned in severalty to the said heirs or devisees, and the shares of the other tenants in common shall be assigned to them, respectively, in severalty, free from such dower.

SEC. 88. Whenever an application is made to the court to decree a partition of real estate between tenants in common, it shall not be necessary to make the wife of any of such persons a party to the proceedings, but her right of dower shall attach to whatever part of such property may be assigned in severalty to her husband, and the other parts thereof shall be assigned free of said right of dower.

Under sections 88, 89, 90 and 93, property may be sold by way of partition, free of a wife's inchoate right of dower, and the husband is entitled to his entire distributive share. *Devlin v. Esher*, 52 App. D. C. 30 (1922); 50 W. L. R. 342.

SEC. 89. Whenever a decree is rendered for the sale of land, in the whole of which a widow is entitled to dower, if she will not consent to a sale of the same free of her dower, the court may, if it appears advantageous to the parties, cause her dower to be laid off and assigned as aforesaid. If she will consent in writing to the sale of the property free from her dower, the court shall order the same to be sold free of her dower, and shall allow her, in commutation of her dower, such portion of the net proceeds of sale as may be just and equitable, not exceeding one-sixth nor less than one-twentieth, according to the age, health, and condition of the widow.

See section 149.

Devlin v. Esher, *supra*.

SEC. 90. Whenever real property is decreed to be sold for the purpose of division of the proceeds between tenants in common because the said property is incapable of being divided between them in specie, the court may decree a sale of the property free and discharged from any right of dower by the wife of any of the parties in his undivided share.

Devlin v. Esher (see sec. 88).

SEC. 91. INFANTS AND PERSONS NON COMPOS MENTIS.—If any infant or person non compos mentis be entitled to any real or personal estate in the District which shall be liable to any mortgage, trust, or lien, or in any way charged with the payment of money, the court shall have the same power to decree in such case as if the infant were of full age or such person non compos mentis were of sound mind.

See sections 138, 162.

SEC. 92. Where an infant or person non compos mentis is entitled to any real or personal estate in the District bound by any executory contract entered into by the person or persons from whom said infant or person non compos mentis has derived title, or where an infant or person non compos mentis claims any right or interest in such property under and in virtue of any such contract, the court in either case shall have the same power to decree the execution of such contract or to pass any just and proper decree that the court would have if the parties were of full age and sound mind.

SEC. 93. PARTITION.—The court may decree a partition of any lands, tenements, or hereditaments on the bill or petition of any tenant in common, claiming by descent or purchase, or of any joint tenant or coparcener; or if it appear that said lands, tenements, or hereditaments can not be divided without loss or injury to the parties interested, the court may decree a sale thereof and a division of the money arising from such sale among the parties, according to their

respective rights; and this section shall apply to cases where all the parties are of full age, to cases where all the parties are infants, to cases where some of the parties are of full age and some infants, to cases where some or all of the parties are non compos mentis, and to cases where all or any of the parties are nonresidents; and any party, whether of full age, infant, or non compos mentis, may file a bill under this section, an infant by his guardian or prochein ami and a person non compos mentis by his committee; and if any contract has been made for the sale of the lands, tenements, or hereditaments by any person or persons interested therein jointly or in common with any infant, idiot, or person non compos mentis, for and in behalf of all the persons so interested, which the court, upon a hearing and examination of all the circumstances, shall consider to be for the interest and advantage both of such infant, idiot, or person non compos mentis and of the other person or persons interested therein to be confirmed, the court may confirm such contract and order a deed to be executed according to the same; and all sales and deeds made in pursuance of such order shall be sufficient in law to transfer the estate and interest of such infant, idiot, or person non compos mentis in such lands, tenements, or hereditaments: *Provided, That in every case of partition any tenant in common who may have received the rents and profits of the property to his own use may be required to account to his cotenants for their respective shares of said rents and profits, and any amounts found to be due on said accounting may be charged against the share of the party owing the same in the property, or its proceeds in case of sale.*

See sections 88-90, 100.

32 Stat. L., p. 523.

In partition, the fees of plaintiff's attorney can not be charged against all the parties when in good faith they retain and are represented by other counsel. *Fletcher v. Coomes*, 52 App. D. C. 159 (1922); 50 W. L. R. 806. Dicta, contra, if defendants do not appear and are benefited by legal services.

Devlin v. Esher, 52 App. D. C. 30 (see sec. 88, supra).

"A bill of partition can not be made the means of trying a disputed title." *Staub v. Staub* (1917-1918), 47 App. D. C. 180; 45 W. L. R. 806, citing with approval *Jordan v. O'Brien*, 33 App. D. C. 189; *Hasler v. Williams*, 34 App. D. C. 319; distinguishing *Taylor v. Leesnitzer*, 37 App. D. C. 356, where rights were determined because no motion to dismiss was made. See also *Goodman v. Wren*, 34 App. D. C. 516 (1910); 38 W. L. R. 265 re rights of equitable owners to maintain partition.

As to partition in pais see *Addison v. Barnes*, 45 App. D. C. 284 (1916); 44 W. L. R. 361.

Quaere: Whether common-law action of account lies by one tenant in common against the other who has secured more than his just share, in view of provisions of section 93. *Lyon v. Bursey*, 42 App. D. C. 519 (1914); 42 W. L. R. 189.

Prall v. Prall, 39 App. D. C. 100 (1912); 40 W. L. R. 356.

Statute creates equitable lien against the interest of a cotenant to the amount found to be due from him on accounting permitted by statute. *Loving v. Moore*, 37 App. D. C. 214 (1911); 39 W. L. R. 361.

For history of partition of District of Columbia among original proprietors see *Bursey v. Lyon*, 30 App. D. C. 597 (1908); 36 W. L. R. 182.

If the court was without jurisdiction to decree a sale of real estate for re-investment or otherwise, the bond of the trustee to make sale is void. *Morse v. U. S.* use *Hines*, 29 App. D. C. 433 (1907); 35 W. L. R. 334, reversed in 218 U. S. 493.

See *Smith v. Cosey*, 26 App. D. C. 569 (1906); 34 W. L. R. 271; *Roller v. Clark*, 19 App. D. C. 539 (1902); 30 W. L. R. 323 re partition by one out of possession.

A mere averment of title in defendant is not sufficient to make a question of title; "proof is required to show that the claim of title is fair and reasonable,

and not a mere sham intended to delay and embarrass the complainant." *Smith v. Butler*, 15 App. D. C. 345 (1899); 27 W. L. R. 770.

"No one is entitled to maintain partition who has not an estate that entitles him to immediate possession." *Sis v. Boarman*, 11 App. D. C. 116 (1897); 25 W. L. R. 431.

Where the property is susceptible of division in kind, a sale will not be ordered against the will of one of the parties. *Walker v. Lyon*, 6 App. D. C. 484 (1895); 23 W. L. R. 392.

SEC. 94. TRUSTEE TO SELL.—If any person shall die having devised real estate to be sold for the payment of debts or other purposes without having appointed a trustee to sell or convey the property, or if the person so appointed shall neglect or refuse to execute the trust, or shall die before the execution of such trust, the said court shall have authority, on the application of any person interested, to appoint a trustee to sell and convey said property and apply the proceeds of sale to the purposes intended. And in all cases where a trustee shall be appointed by last will and testament to execute any trust, and any person interested in the execution of such trust shall make it appear that it is necessary for the safety of those interested therein that the trustee should give bond and security for the due execution of the trust, the said court may order and direct that such bond be given by the trustee by a day named, and on failure of the trustee to give such bond, with security to be approved by the court as directed, the court may displace such trustee and appoint another in his stead, who shall give such bond; and such bond shall be given to the United States and may be sued on for the use of any person interested.

See sections 325, 326.

Act of Maryland, 1785, ch. 72, sec. 4; Comp. Stat. D. C. p. 82, sec. 25.

Iglehart v. Iglehart, 26 App. D. C. 209 (1905); 33 W. L. R. 711 (affirmed in 204 U. S. at 478).

Cruit v. Owen, 25 App. D. C. 514 (1905); 33 W. L. R. 323.

SEC. 95. MORTGAGES.—In all cases of application to said court to foreclose any mortgage or deed of trust, the said court shall have authority, instead of decreeing that the mortgagor be foreclosed and barred from redeeming the mortgaged property, to order and decree that said property be sold and the proceeds be brought into court to be applied to the payment of the debt secured by said mortgage; and if, upon a sale of the whole mortgaged property, the net proceeds shall be insufficient to pay the mortgage debt, the court may enter a decree in personam against the mortgagor or other party to the suit who is liable for the payment of the mortgage debt for the residue of said debt remaining unsatisfied after applying to said debt the proceeds of such sale: *Provided*, That the complainant would be entitled to maintain an action at law or suit in equity for said residue; which decree shall have the same effect and be enforced by execution in the same manner as a judgment at law. And in suits to enforce a vendor's lien on real estate for unpaid purchase money similar relief may be given by a decree of sale and a decree in personam for the unsatisfied residue of the purchase money due.

See sections 534, 535, 538, 539, 544, 545.

Act of Maryland of 1785, ch. 72, sec. 3; Comp. St. D. C. p. 82, sec. 24.

Section 808, R. S. D. C.

Shepherd v. Pepper, 133 U. S. 626 (1889).

Dodge v. Freedman's Trust Co, 106 U. S. 445 (1882).

SEC. 96. DEBTS OF A DECEDENT.—When any person shall die leaving any real estate in possession, remainder, or reversion, and not leaving personal estate sufficient to pay his debts, the said court, on any suit instituted by any of his creditors, may decree that all the real estate left by such person, or so much thereof as may be necessary, shall be sold to pay his debts; and this section shall apply to cases where the heirs or devisees are residents or nonresidents, are of full age or infants, are of sound mind or non compos mentis, and also to cases where the deceased left no heirs or it is not known whether he left heirs or devisees or the heirs or devisees be unknown; and if there be no known heirs the attorney of the United States for the District of Columbia shall be notified of said suit and appear thereto.

See sections 146, 325.

Act of Maryland of 1785, ch. 72, sec. 4; Comp. Stat. D. C. p. 82, sec. 26.

Allegation and proof of deficiency in personal assets is jurisdictional in proceedings under this section. *Dahlgren v. National Savings & Trust Co.*, 41 App. D. C. 201 (1913); 42 W. L. R. 10, citing with approval *Glenn v. Sothoron*, 4 App. D. C. 125; 22 W. L. R. 649.

As to collateral attack on decree of sale, see *Duncanson v. Manson*, 3 App. D. C. 260 (1894); 22 W. L. R. 321; affirmed in 166 U. S. 533.

As to necessary parties to creditors bill to sell decedent's real estate, see *Plumb v. Bateman*, 2 App. D. C. 156 (1894); 22 W. L. R. 20.

SEC. 97. SALE OF CONTINGENT INTERESTS.—Where real estate is limited to one or more for life, with a contingent limitation over to such issue of one or more of the tenants for life as shall be living at the death of their parent or parents, and the deed or will does not prohibit a sale, said court may, on the application of the tenants for life, and if the court shall be of opinion that it is expedient to do so, order a sale of such estate and decree to the purchaser an absolute and complete title in fee simple.

R. S. D. C., sec. 969; Comp. Stat. D. C. p. 355, sec. 1.

Morse v. U. S., use of *Hine*, 29 App. D. C. 433 (1907); 35 W. L. R. 334, reversed in 218 U. S. 493.

Trust Co. v. Muse, 4 App. D. C. 12 (1894); 22 W. L. R. 409.

SEC. 98. Any application for such sale shall be by bill, verified by the oath of the party or parties, in which all the facts shall be distinctly set forth upon the existence of which it is claimed that such sale should be decreed, which facts shall be proved by competent testimony. All of the issue embraced in the limitation who are in existence at the time of the application shall be made parties defendant, together with all who would take the estate in case the limitation over should never vest; and minors of the age of fourteen years or more shall answer in proper person under oath, as well as by guardian ad litem, and all evidence shall be taken upon notice to the parties and the guardian ad litem.

R. S. D. C., secs. 970-972; Comp. Stat. D. C., p. 335, secs. 2-4.

SEC. 99. The proceeds of sale of said real estate shall be held under the control and subject to the order of the court, and shall be invested under its order and supervision upon real and personal security, and the same shall, to all intents and purposes, be deemed real estate and stand in the place of the real estate from the sale of which they are derived, and as such be subject to the limitations of the deed or will.

R. S. D. C., sec. 973; Comp. Stat. D. C., p. 356, sec. 5.

SEC. 100. Wherever one or more persons shall be entitled to an estate for life or years, or a base or qualified fee simple, or any other limited or conditional estate in lands, and any other person or persons shall be entitled to a remainder or remainders, vested or contingent, or an interest by way of executory devise in the same lands, on application of any of the parties in interest the court may, if all the parties in being are made parties to the proceeding, decree a sale or lease of the property, if it shall appear to be to the interest of all concerned, and shall direct the investment of the proceeds so as to inure in like manner as provided by the original grant to the use of the same parties who would be entitled to the land sold or leased; and all such decrees, if all the persons are parties who would be entitled if the contingency had happened at the date of the decree, shall bind all persons, whether in being or not, who claim or may claim any interest in said land under any of the parties to said decree, or under any person from whom any of the parties to such decree claim, or from or under or by the original deed or will by which such particular, limited, or conditional estate, with remainders or executory devises, were created.

See sections 90-93, 162.

Prall v. Prall, 39 App. D. C. 100 (1912); 40 W. L. R. 356.

Morse v. U. S. use *Hines*, 29 App. D. C., 433 (see sec. 97, *supra*), reversed, 218 U. S. 493.

As to equitable jurisdiction to sell real estate of lunatic prior to enactment of Code, see *Clark v. Mathewson*, 7 App. D. C. 382 (1896); 24 W. L. R. 41.

Trust Co. v. Muse, 4 App. D. C. 12 (1894); 22 W. L. R. 409.

SEC. 101. WHEN DECREE SHALL HAVE EFFECT OF CONVEYANCE.—In all cases where a decree shall be made for a conveyance, release, or acquittance, and the party against whom such decree shall pass shall neglect or refuse to comply therewith, such decree shall stand, be considered and taken, in all courts of law and equity, to have the same operation and effect as if the conveyance, release, or acquittance had been executed conformably to such decree.

Act of Maryland of 1785, ch. 72, sec. 13; Comp. Stat. D. C., p. 85, sec. 34.

SEC. 102. PROCESS AGAINST INFANTS.—Whenever an infant is a party defendant in any suit, in equity or at law, the subpœna or summons issued in such suit shall be served upon him personally, and also the person with whom he resides if under sixteen years of age, if within the District, and said infant shall in such case be produced in court, unless, for cause shown, the court shall dispense with his appearance; and it shall be the duty of the court to appoint a suitable and competent person guardian ad litem for such infant, to appear for and defend such suit on his behalf, and whenever in the judgment of the court the interests of such infant shall require it the court shall assign a solicitor or attorney to represent such infant, whose compensation shall be paid by the plaintiff, or out of the estate of such infant, at the discretion of the court.

See section 138.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 523), repealing 31 Stat. L., pt. 1, p. 1189.

Applies only to civil and not criminal proceedings. *Ledrick v. U. S.*, 42 App. D. C. 384 (1914); 42 W. L. R. 729.

Duncanson v. Manson, 3 App. D. C. 260 (1894); 22 W. L. R. 321; affirmed in 166 U. S. 533.

SEC. 103. If any person shall secrete an infant against whom process has issued, so as to prevent the service of such process, or shall prevent his appearance in court as aforesaid, such person shall be liable to attachment and punishment as for contempt; or if any infant shall secrete himself or evade the service of process, he may be proceeded against as if he were a nonresident.

SEC. 104. PERSONS NON COMPOS MENTIS.—If a person non compos mentis be a party defendant in any *suit at law, or in equity, process* shall be served upon him, if within the District, and upon his committee, if there be one within the District, and if there be no such committee and the court shall be satisfied as to the condition of said party, it may appoint a guardian ad litem to answer and defend for him.

See section 138.

32 Stat. L., pt. 1, p. 523.

SEC. 105. NONRESIDENTS.—Publication may be substituted for personal service of process upon any defendant who can not be found and who is shown by affidavit to be a nonresident, or to have been absent from the District for at least six months, or against the unknown heirs or devisees of deceased persons, in suits for partition, divorce, by attachment, foreclosure of mortgages and deeds of trust, the establishment of title to real estate by possession, the enforcement of mechanics' liens, and all other liens against real or personal property within the District, and in all actions at law and in equity which have for their immediate object the enforcement or establishment of any lawful right, claim, or demand to or against any real or personal property within the jurisdiction of the court.

Personal service of process may be made by any person not a party to or otherwise interested in the subject matter in controversy on a nonresident defendant out of the District of Columbia, which service shall have the same effect and no other as an order of publication duly executed. In such case the return must be made under oath in the District of Columbia, unless the person making the service be a sheriff or deputy sheriff, a marshal or deputy marshal, authorized to serve process where service is made, and such return must show the time and place of such service and that the defendant so served is a nonresident of the District of Columbia. The cost and expense of such service of process out of the District of Columbia shall be borne by the party at whose instance the same is made and shall not be taxed as a part of the costs in the case; but where such service of process is made by some authorized officer of the law in this section mentioned, the actual and usual cost of such service of process shall be taxed as a part of the costs in the case.

See sections 110, 130, 140, 236.

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 556).

R. S. D. C., sec. 787.

"Constructive service is a statutory proceeding, and each step required to be taken is essential to the validity of the service." *Thompson v. Tanner*, 53 App. D. C. 3 (1923); 51 W. L. R. 230; *Morse v. U. S. use Hine*, 29 App. D. C. 433; 35 W. L. R. 334 (1907); reversed in 218 U. S. 493.

Although this section authorizes publication in cases of attachment, an attachment can not issue under section 445 against the property of a decedent for a debt due by him, when the estate is being administered in another jurisdiction. *Jordan v. Landram*, 35 App. D. C. (1910) 89; 38 W. L. R. 331 (citing with approval *Graham v. Fitch*, 13 App. D. C. 569).

A check or draft in the hands of the Treasurer of the United States, in which the United States have no longer any interest is "personal property" within the meaning of this section. *Jones v. Rutherford*, 26 App. D. C. 114 (1905); 33 W. L. R. 498.

A general appearance waives irregularities in obtaining the order of publication. *Landram v. Jordan*, 25 App. D. C. 291 (1905); 33 W. L. R. 243, affirmed, 203 U. S. 56.

Quaere: Whether a defendant in a contract action, by complying with the conditions of section 1531, can convert the same into one having for its "immediate object the enforcement * * * of any lawful right * * * to * * * any personal property within the jurisdiction," so as to authorize service by publication under section 105. *Dexter v. Lichliter*, 24 App. D. C. 222 (1904); 32 W. L. R. 732.

Staffan v. Zeust, 10 App. D. C. 260 (1897); 25 W. L. R. 188.

Backus Heater Co. v. Simonds, 2 App. D. C. (1894) 290; 22 W. L. R. 137.

SEC. 106. No order for the substitution of publication for personal service shall be made until a summons for the defendant shall have been issued and returned "Not to be found," and the nonresidence of the defendant or his absence for at least six months shall be proved by affidavit to the satisfaction of the court.

R. S. D. C., sec. 788; Comp. Stat. D. C. p. 445, sec. 24.

Dexter v. Lichliter, 24 App. D. C. 222 (1904); 32 W. L. R. 732.

Order of publication cannot be had before return day named in summons. *Thompson v. Tanner*, 53 App. D. C. 3 (1923); 51 W. L. R. 230 (citing with approval *Plumb v. Bateman*, 2 App. D. C. 156). And this rule applies as well to pluries summons. *Ib.*

SEC. 107. The order of publication shall be in the following or an equivalent form:

In the supreme court of the District of Columbia.

A B, complainant,	}	In ----- No. -----.
versus		
C D, defendant.		

The object of this suit is to (state it briefly).

On motion of the complainant, it is this ---- day of ----, A. D. ----, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in cause of default.

E F, Justice.

R. S. D. C., sec. 789; Comp. Stat. D. C. p. 445, sec. 25.

SEC. 108. Every such order shall be published at least once a week for three successive weeks, or oftener, or for such further time as may be specially ordered; and no order or decree shall be passed against said absent or nonresident defendant upon proof of notice by such publication unless the complainant, plaintiff, his agent, or solicitor, or attorney shall file in the cause an affidavit showing that at least twenty days before applying for such order or decree he mailed, postpaid, a copy of said advertisement, directed to the party therein ordered to appear, at his last known place of residence, or that he has been unable to ascertain the last place of residence of said party after diligent effort to ascertain the same. On failure of the defendant to appear in obedience to said notice within the time named therein, a decree or judgment by default may be entered: *Provided*, That if the said absent or nonresident defendant be an infant, the court shall appoint a guardian ad litem to answer and defend for

him, and may assign counsel to represent him as provided in section one hundred and two.

See section 446.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 523), repealing 31 Stat. L. p. 1189. *Thompson v. Tanner*, 53 App. D. C. 3 (see secs. 105, 106, *supra*).

Morse v. U. S. use Hines, 29 App. D. C. 433 (see sec. 105, *supra*); reversed in 218 U. S. 493.

Two publications in each of four consecutive periods of seven days from date of order of publication satisfy requirement that publication be twice a week for period of not less than four weeks. *Leach v. Burr*, 188 U. S. 510 (1903), affirming *Leach v. Burr*, 17 App. D. C. 128; 28 W. L. R. 782.

SEC. 109. If the court shall be satisfied that said absent or non-resident defendant is non compos mentis, notice may be given to him by publication as aforesaid, and upon his failure to appear such decree or judgment may be passed as the circumstances of the case may require: *Provided*, That no decree or judgment shall be passed unless the case is fully proved; and the court shall assign a solicitor or attorney to represent such nonresident defendant, and such solicitor or attorney shall be paid by the complainant or out of the estate of the defendant, at the discretion of the court.

SEC. 110. UNKNOWN PARTIES.—Upon allegation under oath, and proof satisfactory to the court, that it is unknown whether one who, if living, would be a proper party to any judicial proceeding is living or dead, such party may be proceeded against as if he were living, and with like effect, provided no representative of or claimant under such person shall intervene in the suit before final determination thereof, after notice by publication as in the case of nonresident parties. If such person be dead, and it is unknown whether he died testate or left heirs, or his heirs and devisees be unknown, such unknown persons may be described as the heirs or devisees of the person who, if living, would be the proper party, and notice shall be given by publication to such persons according to such description, and the same proceedings shall be had against them as are had against nonresident defendants, except that said notice shall be published at least twice a month for such period as the court may order, which period shall not be less than three months without good cause shown, and which notice shall require said parties to appear on or before the first rule day occurring after the expiration of such prescribed period, and no decree shall be passed against said parties unless the court shall be satisfied that due diligence has been used to ascertain such unknown heirs.

Title amended (32 Stat. L. 524).

SEC. 111. ADVERSE POSSESSION.—When title to any real estate in the District of Columbia shall have become vested in any person or persons by adverse possession, the holder thereof may file a bill in the supreme court of the District of Columbia to have such title perfected, in which bill it shall be sufficient to allege that the complainant holds the title to such real estate, and that the same has vested in him, or in himself and in those under whom he claims, by adverse possession; and in such action it shall not be necessary to make any person a party defendant except such persons as may appear to have a claim or title adverse to that of the *complainant*. Upon the trial of such cause, proof of the facts showing title in the *complainant* by adverse possession shall entitle him to a decree of the court declaring

his title by adverse possession, and a copy of such decree may be entered of record in the office of the recorder of deeds for said District. In any such action if process shall be returned not to be found, notice by publication may be substituted as in case of nonresident defendants. If in any case it shall be unknown whether one who, if living, would be an adverse party is living or dead, or in the case of a decedent, whether he died testate or left heirs, or his heirs or devisees are unknown, the cause may be proceeded with under the provisions of section one hundred and *ten*: *Provided*, That the rights of infants or others under legal disability shall be saved for a period of two years after the removal of their disabilities: *Provided, however*, That the entire period during which such rights shall be preserved shall not exceed twenty-two years from the time such rights accrued, either in said *complainant* or in the person or persons under whom he claims.

See sections 513, 999, 1265.

32 Stat. L. 524.

Act of March 3, 1899 (30 Stat. L. 1379).

Brumbaugh *v.* Gompers, 50 App. D. C. 130 (1920); 48 W. L. R. 822.

One cotenant may hold adversely to his coowner, although ouster or disseisin is not to be presumed from the mere fact of sole possession. Henderson *v.* Mann, 47 App. D. C. 174 (1917); 45 W. L. R. 790.

This section has no application to action in ejectment based upon title by adverse possession. McMillan *v.* Fuller, 41 App. D. C. 384 (1914); 42 W. L. R. 51.

"A title is good (as distinguished from good of record) if it has been acquired by adverse possession under such circumstances, and for such length of time, as to render it indefeasible at law or in equity." Marsh *v.* Kenyon, 37 App. D. C. 574 (1911); 39 W. L. R. 811, citing with approval Block *v.* Ryan, 4 App. D. C. 283.

Title by adverse possession may be secured although possession was had under mistake (whether the mistake was honest or deliberate). Rudolph *v.* Peters, 35 App. D. C. 438 (1910); 38 W. L. R. 630, citing with approval Johnson *v.* Thomas, 23 App. D. C. 150 (1904).

Title acquired by adverse possession is not lost by subsequent abandonment of possession. Myers *v.* Mayhew, 32 App. D. C. 205 (1908); 36 W. L. R. 808, citing Todd *v.* Kauffman, 8 Mackey 304. A bill in equity is the proper remedy to perfect title by adverse possession, and not ejectment, where defendants have not entered into possession or attempted to oust the plaintiff. *Ib.*, citing Peck *v.* Heurich, 6 App. D. C. 273; 23 W. L. R. 289. "A great deal of indulgence has always been extended to one in the undisturbed possession of property, in respect of proceedings to quiet or perfect a title that had not been assailed." *Ib.*

"Actual inclosure is not necessary to prove possession; that while inclosure is the most tangible evidence of possession, a continuous, uninterrupted, open, actual, exclusive, and adverse possession is in law equally as satisfactory." Howison *v.* Masson, 29 App. D. C. 338 (1907); 35 W. L. R. 257, citing Holtzman *v.* Douglas, 5 App. D. C. 397; 23 W. L. R. 146, which was affirmed in 168 U. S. 278 (1897).

Hooper *v.* Stuart, 23 App. D. C. 434 (1904); 32 W. L. R. 281.

As to apparent conflict between sections 111 and 1265 as to principal limitation of actions, see Gvin *v.* Brown, 21 App. D. C. 295 (1903); 31 W. L. R. 238.

As to elements of adverse possession, see Reid *v.* Anderson, 13 App. D. C. 30 (1898); 26 W. L. R. 387.

Davis *v.* Coblens, 12 App. D. C. 51 (1898); 26 W. L. R. 34; affirmed in 174 U. S. 719.

Reeves *v.* Low, 8 App. D. C. 105 (1896); 24 W. L. R. 113.

SEC. 112. CORPORATIONS.—In a suit against a corporation, whether foreign or domestic, if process can not be served, such corporation may be proceeded against as a nonresident defendant, by notice by publication.

See section 1537.

SEC. 113. ENFORCEMENT OF DECREES.—The said court may, for the purpose of executing a decree, or to compel obedience to the same, issue an attachment against the person of the defendant, and may order an immediate sequestration of his real and personal estate, or such part thereof as may be necessary to satisfy the decree, or may issue a *fieri facias* and attachment by way of execution against his lands, tenements, chattels, and credits, or other incorporeal property, to satisfy the decree; or the court may, by order and injunction, cause the possession of the estate and effects whereof the possession or a sale is decreed to be delivered to the complainant, or otherwise, according to the tenor and import of the decree and as the nature of the case may require; and in case of sequestration may order payment and satisfaction to be made out of the estate and effects so sequestered, according to the true intent and meaning of the decree; and in case any defendant shall be arrested and brought into court upon any process of contempt issued to compel the performance of any decree, the court may, upon motion, order such defendant to stand committed, or may order his estate and effects to be sequestered and payment made, as above directed, or possession of his estate and effects to be delivered by order and injunction as above directed, until such decree or order shall be fully performed and executed, according to the tenor and true meaning thereof, and the contempt cleared; but where the decree only directs the payment of money no defendant shall be imprisoned except in those cases especially provided for.

Act of Maryland of 1785, ch. 72, sec. 25; Comp. Stat. D. C. p. 89, sec. 44.

SEC. 114. All interlocutory orders may be enforced by such process as might be had upon a final judgment or decree to the like effect, and the payment of costs adjudged to any party may be enforced in like manner.

SEC. 115. An order or decree for the delivery of chattels may be enforced by the same writs as are used in the action of replevin at common law, as well as those heretofore used for its enforcement in equity practice.

SEC. 115a. LUNACY PROCEEDINGS.—All writs de lunatico inquiring shall issue from said equity court, and a justice holding said court shall preside at all inquisitions of lunacy, and may impanel a jury from among the petit jurors in attendance in the Supreme Court of the District of Columbia.

Sections 115a to 115f, inclusive, interpolated by act of June 30, 1902 (32 Stat. L. 524).

Section 115a amended by act of April 19, 1920 (41 Stat. L. pt. 1, p. 556).

See also 30 Stat. L. 811; 32 Stat. L. 1043; 33 Stat. L. 740.

SEC. 115b. ESTATES OF LUNATICS.—The said court shall have full power and authority to superintend and direct the affairs of persons non compos mentis, and to appoint a committee or trustees for such persons after hearing the nearest relatives of such person or some of them if residing within the jurisdiction of the court, and to make such orders and decrees for the care of their persons and the management and preservation of their estates, including the collection, sale, exchange, and reinvestment of their personal estate, as to the court may seem proper. The court may, upon such terms as under

the circumstances of the case it may deem proper, decree the conveyance and release of any right of, dower of a person non compos mentis, whether the same be inchoate or otherwise.

Act of Maryland of 1785, ch. 72, sec. 6, Comp. Stat. D. C. p. 83, sec. 27.

Appointment before hearing relatives is voidable and not void. *Coleman v. Schwartz*, 50 App. D. C. 111 (1920); 48 W. L. R. 790. Court has discretion in selection of committee. *Ib.*

As to liability of lunatic's estate for maintenance at Government Hospital, see *DePue v. D. C.* 45 App. D. C. 54 (1916); 44 W. L. R. 226, citing *Baker v. D. C.* 39 App. D. C. 42 (1912).

Logue v. Fenning 29 App. D. C. 519 (1907); 35 W. L. R. 382.

Lunatic may file suit for annulment of marriage, through next friend, but committee should be joined as party defendant. *Mackey v. Peters* 22 App. D. C. 341 (1903); 31 W. L. R. 504.

SEC. 115c. The court shall have the same power in respect of the freehold or leasehold estates of such persons as is provided for in relation to the estates of infants, to be exercised upon the application of the guardian, trustee, or committee of such person; and upon the death of any such person non compos mentis the proceeds of any sale of his estate which may have been invested otherwise than in real estate shall be deemed real estate, and shall descend as the property or estate would if it had not been sold.

Act of Maryland of 1800, ch. 67, sec. 3, Comp. Stat. D. C. p. 80, sec. 17.

Courts of equity have no inherent jurisdiction to decree sale of lunatic's property for better investment. *Clark v. Mathewson* 7 App. D. C. 382 (1896); 24 W. L. R. 41.

SEC. 115d. The said court may order any part of the estate of a person non compos mentis, for whom a committee, guardian, or trustee has been appointed, to be sold, when necessary for his maintenance, upon application of said committee, guardian, or trustee, and full proof of the necessity of such sale. Upon the application of any judgment creditor or mortgagee of a person non compos mentis the court may decree a sale of the real or personal estate of such non compos mentis, or such part thereof as may be necessary to pay the claim of such creditor, upon being satisfied that such claim is just and there are no other means of paying the same.

Act of Maryland of 1785, ch. 72, sec. 6; Comp. Stat. D. C. p. 83, sec. 27.

SEC. 115e. No sales of the property of infants or persons non compos mentis made by authority of the foregoing sections shall be valid and effectual to pass title to the property sold until they have been reported to and ratified by the court.

SEC. 115f. DRUNKARDS.—Whenever any person residing in said District, and owning any estate, real or personal, situate therein, is unfit from the habitual use of intoxicating liquors, or from the habitual use of opium, cocaine, or any similar substance, or any compound or derivative thereof, to properly manage or control the same, the said court, on the petition of any creditor or relative of such person, or if there be no creditor or relative, upon the petition of any person living in said District, and upon summons being regularly served upon such person so alleged to be unfit to manage or control his property as aforesaid, commanding him to appear and answer such petition, may order a jury to be summoned to ascertain whether such person be an habitual drunkard or addicted to the habitual use of opium, cocaine, or any similar substance or any com-

pound or derivative thereof and unfit from any of these causes to manage and control his property, and if the jury shall find that such person is an habitual drunkard or an habitual user of opium, cocaine, or any similar substance or any compound or derivative thereof and unfit to manage or control his property, such finding, when confirmed by the court, shall be entered of record in said cause, and it shall be the duty of the court thereupon to appoint some fit person to be committee of the person so declared unfit to manage or control his property as aforesaid.

Such committee before entering upon the discharge of his duties shall execute a bond, with surety, to be approved by the said court or one of the justices thereof, to the United States in a penalty equal to the amount of the personal property and the yearly rents to be derived from the real estate of such person, conditioned for the faithful performance of his duties as such committee; and he shall have control of the said estate, real and personal, with power to collect all debts due said drunkard, and to adjust and settle all accounts owing by him, and to sue and be sued in his representative capacity. He shall apply the annual income of the estate of such habitual drunkard to the support of said person, and the maintenance of his family and education of his children; and shall in all other respects perform the same duties and have the same rights as pertain to committees of lunatics and idiots.

When any person for whom a committee has been appointed under the provisions of this section shall become competent to manage his property on account of reformation in his habits, he may apply to said court to have said committee discharged and the care and control of his property restored to him; and if it shall appear by the verdict of a jury summoned therefor, or by affidavits, or other evidence to the satisfaction of the court, that said applicant is a fit person to have the care or control of his property, an order shall be entered restoring such person to all the rights and privileges enjoyed before said committee was appointed. And as to the property of any person for whom a committee has been so appointed the court shall have the same powers that are herein given to it in respect of the property of infants.

Act of Legislative Assembly, D. C., June 25, 1873, ch. 21: Comp. Stat. D. C., p. 104, secs. 98, et seq.

Finding of unfitness to manage property in a proceeding under this section is conclusive of condition on date of rendition; "it is not so as of a date prior thereto, but at the same time it has the tendency to raise some inference that the helpless condition must have existed for some space of time." *Knott v. Giles*, 27 App. D. C. 581 (1906), 34 W. L. R. 414.

SEC. 116. PROBATE COURT.—The special term of said supreme court, heretofore known as the orphans' court, shall be designated the probate court, and the justice holding said court shall have and exercise all the powers and jurisdiction by law held and exercised by the orphans' court of Washington County, District of Columbia, prior to the twenty-first day of June, anno Domini eighteen hundred and seventy.

16 Stat. L. 161; 30 Stat. L. 434.

Probate court has exclusive jurisdiction to take proof of wills and to admit the same to probate and record. *Gracie v. Trust Co.*, 51 App. D. C. 141 (1921); 50 W. L. R. 5. Hence equity is without jurisdiction to set up a lost will. *Ib.*

"A proceeding in a probate court is not a proceeding in equity, and final orders therein are only reviewable in accordance with the practice at common law. * * * And the evidence in such cases must be brought up in bill of exceptions." *Craighead v. Alexander*, 38 App. D. C. 229 (1912) 40 W. L. R. 114.

Quaere: "Whether upon the filing of the will, the court had authority summarily to determine whether the decedent died intestate, and thus indirectly challenge the validity of the will." *In re Dahlgren*, 30 App. D. C. 588 (1908) ; 36 W. L. R. 198.

Prior to act of June 8, 1898 (30 Stat. L. 434), "the probate of a will was evidence of its validity only so far as it affected personal property. As showing the passage of title to real estate the instrument itself must have been produced, with the proof of subscribing witnesses." *Young v. Norris Peters Co.*, 27 App. D. C. 140 (1906) ; 34 W. L. R. 240. The provisions of section 141 D. C. Code are permissive and not mandatory. *Ib.*

Altho the probate court is one of limited jurisdiction, it has all the authority necessarily implied in the act of its creation. *Guthrie v. Welch*, 24 App. D. C. 562 (1905) ; 33 W. L. R. 162. Court, in its sound discretion may remove collector. *Ib.*

Jurisdiction and powers of probate court are substantially the same as those of its predecessor under the former laws. *Richardson v. Daggett*, 24 App. D. C. 440 (1904) ; 33 W. L. R. 24, cited with approval in *Miniggio v. Hutchins*, 43 App. D. C. 117 (1915), 43 W. L. R. 119.

Beyer v. Le Fevre, 186 U. S. 114 (1902) reversing 17 App. D. C. 238, 28 W. L. R. 863.

"It is not the province of a probate court to become a court of construction; that function belongs to the ordinary courts of law or equity." *Vestry v. Bostwick*, 8 App. D. C. 452 (1896) ; 24 W. L. R. 310. Cf. *McIntire v. McIntire*, 14 App. D. C. 337 ; 27 W. L. R. 198 (1899), affirmed in 192 U. S. 116.

SEC. 117. That in addition to the jurisdiction conferred in the preceding section, plenary jurisdiction is hereby given to the said court holding the said special term to hear and determine all questions relating to the execution and to the validity of any and all wills devising any real estate within the District of Columbia, and of any and all wills and testaments properly presented for probate therein, and to admit the same to probate and record in said special term; and neither the execution nor the validity of any such will or testament so admitted to probate and record shall be impeached or examined collaterally, but the same shall be in all respects and as to all persons *res judicata*, subject, nevertheless, to the provisions hereinafter contained.

30 Stat L. 434 (act of June 8, 1898, sec. 2).

Gracie v. Trust Co., 51 App. D. C. 141 (see sec. 116, supra).

In re Dahlgren, 30 App. D. C. 588 (see sec. 116, supra).

Young v. Norris Peters Co., 27 App. D. C. 140 (see sec. 116, supra).

Guthrie v. Welch, 24 App. D. C. 565 (see sec. 116, supra).

Richardson v. Daggett, 24 App. D. C. 440 (see sec. 116, supra).

Dugan v. Northcutt, 7 App. D. C. 351 (1895) ; 24 W. L. R. 2.

As to proceeding to establish lost will, see *Fitzgerald v. Wynne*, 1 App. D. C. 107 (1893) ; 21 W. L. R. 611, *Gracie v. Trust Co.*, supra.

SEC. 118. The said court shall hold weekly sessions on such days as it may appoint and on as many days as may be necessary for the dispatch of its business.

SEC. 119. POWERS.—It shall have full power and authority to take the proof of wills of either personal or real estate and admit the same to probate and record, and for cause to revoke the probate thereof; to grant and, for any of the causes hereinafter mentioned, to revoke letters testamentary, letters of administration, letters ad colligendum, and letters of guardianship, and to appoint a successor in the place of anyone whose letters have been revoked; to hear, ex-

amine, and decree upon all accounts, claims, and demands existing between executors and administrators and legatees, or persons entitled to a distributive share of an intestate estate, or between wards and their guardians; *to enforce the rendition of inventories and accounts by executors, administrators, collectors, guardians, and trustees required to account to said court*; to enforce the distribution of estates by executors and administrators, and the payment or delivery by guardians of money or property belonging to their wards: *Provided*, That the jurisdiction of said probate court shall not be exclusive of the jurisdiction of the said equity court to entertain suits by legatees or next of kin against executors or administrators, or by wards against their guardians for an accounting; and, except in cases provided for in section numbered one hundred and *forty-five*, any settlement of accounts in said probate court shall only be prima facie evidence as to the correctness of said accounts in any such suits, or in suits by creditors against executors or administrators, or against heirs or devisees, to subject the real estate of decedents to the payments of their debts.

32 Stat. L. 524.

See sections 116, 146, 147, 148.

Act of Maryland, 1798, ch. 101, subch. 15, sec. 12; Comp. Stat. D. C. p. 300, sec. 50.

Gracie v. Trust Co., 51 App. D. C. 141 (see sec. 116, supra).

Upon reversal of judgment sustaining caveat, and its remand, the case is reinstated in the court below upon the issue as originally framed. If caveator insists on new trial, he is entitled to it. Until the case is disposed of, the probate court is without jurisdiction to probate the will. *Hutchins v. Hutchins*, 49 App. D. C. 118 (1919); 48 W. L. R. 85.

Probate court has power, over objection of surviving administrator, to appoint an administrator to fill a vacancy caused by the death of one of two administrators. *Dennis v. Hamilton*, 48 App. D. C. 160 (1918); 46 W. L. R. 722, distinguishing *Williams v. Williams*, 24 App. D. C. 214 (see sec. 276, infra).

"Once letters have been granted to a party upon a misstatement or misconception of the facts, the same may be revoked and the party really entitled thereto appointed." *Emery v. Emery*, 45 App. D. C. 576 (1917).

"The probate court is without jurisdiction to compel an executor or administrator to pay a claim asserted against a decedent's estate." *Miniggio v. Hutchins*, 43 App. D. C. 117 (1915); W. L. R. 119. (See *Dante v. Miniggio*, 46 App. D. C. 162; 43 W. L. R. 149.)

Guthrie v. Welch, 24 App. D. C. 562 (see sec. 116, supra).

As to allowance of attorneys' fees for defending purported will, see *Tuohy v. Hanlon*, 18 App. D. C. (1901) 225; 29 W. L. R. 417; *McIntire v. McIntire*, 14 App. D. C. 337 (1899); 27 W. L. R. 198; 20 App. D. C. 134; affirmed 192 U. S. 116 (1899); *Hutchins v. Hutchins*, 48 App. D. C. 286 (1919) 47 W. L. R. 218. (See also *Howard v. Howard*, 38 App. D. C. 575 (1912), 40 W. L. R. 293; *Kengla v. Randall*, 22 App. D. C. 463 (1903); 31 W. L. R. 695, distinguishing *Tuohy v. Hanlon*, 18 App. D. C. 225; 29 W. L. R. 417; *Hamilton v. Shillington*, 19 App. D. C. 268 (1902); 30 W. L. R. 39, distinguishing *Tuohy v. Hanlon*, supra.)

Probate court has jurisdiction over residuum of estate of which testator died intestate. *Sinnott v. Kenaday*, 12 App. D. C. 115 (1899); 26 W. L. R. 121 (see also *Sinnott v. Kenaday*, 14 App. D. C. 1; 27 W. L. R. 82, reversed on other grounds in 179 U. S. 606).

Vestry v. Bostwick, 8 App. D. C. 452 (see sec. 116, supra).

Has jurisdiction to order partial distribution. *McLane v. Cropper*, 5 App. D. C. 276 (1895); 23 W. L. R. 115.

"In view of its supervisory power over their accounts a court of probate, of course, has a check upon the contracts of executors and administrators, and yet it has neither power to make contracts for them nor to direct or authorize them to make any." *MacKie v. Howland*, 3 App. D. C. 461 (1894); 22 W. L. R. 425. (See sec. 123A.)

Mann v. McDonald, 3 App. D. C. 456 (1894); 22 W. L. R. 385.

Estate of Atwood, 2 App. D. C. 74 (1893); 22 W. L. R. 53.

SEC. 120. CLERK.—The register of wills of the District of Columbia shall be, and hereby is, authorized, empowered, and directed to act as clerk of the said probate term, to keep and certify its records and generally, with respect to said term, to exercise all the powers and perform all the duties which might otherwise be properly exercised or performed by the clerk of the supreme court of the District of Columbia.

SEC. 121. The said register of wills may receive inventories and accounts of sales, examine vouchers, and state accounts of executors, administrators, collectors, and guardians, subject to final passage or rejection of same by the court, may take probate of claims against the estates of deceased persons that are proper to be brought before him, and pass any claims not exceeding three hundred dollars; may take the probate of wills and accept the bonds of executors, administrators, collectors, and guardians, subject to approval by the court. It shall be his duty to make full and fair entries of the proceedings of said court, and also to make a fair record in a strong bound book or books of all wills proved before him or said court, and of all other matters by law directed to be recorded in said court, and to lodge every original paper filed with him in such place of safety as the court may appoint. He shall make out and issue every summons, process, and order of the court, and in every respect act under its control and direction in reference to matters coming within the jurisdiction of said court. He shall be, and hereby is, authorized to appoint two deputies, who may do and perform any and all the acts necessary in the administration of his office and the certification of the records of said court which he himself is authorized to do; also to appoint and fix the number and the compensation of the employees of said probate court and office of register of wills: *Provided*, That any expenditures incurred by him in so doing shall not be a charge upon the public Treasury, but shall, together with his own compensation, at the rate of four thousand dollars per annum, be paid out of the revenues of the office of register of wills: *And provided further*, That the employees of said office shall not be in excess of the number actually necessary for the proper conduct of the office of said register of wills.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 525) repealing 31 Stat. L. p. 1189.

SEC. 122. CONCEALMENT OF ASSETS BY STRANGERS.—If an executor, administrator, or collector shall believe that any person conceals any part of his decedent's estate, he may file a petition in said court alleging such concealment, and the court may compel an answer thereto on oath; and if satisfied, upon an examination of the whole case, that the party charged has concealed any part of the estate of the deceased, the court may order the delivery thereof to the executor, administrator, or collector, and may enforce obedience to such order in the same manner in which orders of said court may be enforced, as hereinafter provided.

See section 124.

Purpose of section is to furnish prompt remedy for discovery of assets and their reduction to possession when discovered. "But we are unable to find a further intention to confer upon the probate court jurisdiction to determine the question of the actual ownership of such property" as between executor and rival claimant. *Richardson v. Daggett*, 24 App. D. C. 440 (1904); 33 W. L. R. 24.

On petition of creditor, court is without jurisdiction to order fund in possession of third person (who claims an interest therein) paid into the registry of the court. (*Cook v. Speare*, 13 App. D. C. 446 (1898), 26 W. L. R. 744.

SEC. 123. INVESTMENT OF FUNDS.—The said court may, in its discretion, order an executor, administrator, collector, or guardian, whom it may have appointed, to bring into court or invest in securities, to be approved by the court, any money or funds received by such executor, administrator, collector, or guardian; and if said party shall not, within a reasonable time, to be fixed by the court, comply with the order, his letters may be revoked.

See section 369.

Referred to but not construed in *Guthrie v. Welch*, 24 App. D. C. 562 (1905); 33 W. L. R. 162.

When executor is personally chargeable with interest. *Mades v. Miller*, 2 App. D. C. 455 (1894); 22 W. L. R. 177.

SEC. 123a. CONTINUING DECEDENT'S BUSINESS.—The said court may, in its discretion, authorize any fiduciary, accountable to it, to continue the business of a decedent for a period not exceeding twelve months after decedent's death. No order shall be entered so authorizing a fiduciary until he shall have filed a petition under oath, supported by the affidavits of two reputable persons familiar with the decedent's business, setting forth the appraised value of the business, whether the decedent conducted it at a profit or loss and the approximate amount thereof, and the estimated amount of the expenses per month necessary to be incurred in order to continue the business. Any fiduciary who is given such authorization shall file monthly statements showing all receipts and disbursements, debts contracted and obligations incurred, and the profit or loss; and the court, in its discretion, may order the discontinuance of the business at any time.

Debts contracted and obligations incurred by the fiduciary in so continuing the business of the decedent shall be deemed to be an expense of administration of the estate.

Interpolated by act of April 19, 1920 (41 Stat. L. pt. 1, p. 556).

SEC. 124. CONCEALMENT BY EXECUTOR OR ADMINISTRATOR.—If any person interested in any decedent's estate shall by petition allege that the executor, administrator, or collector has concealed or has in his hands and has omitted to return in the inventory or list of debts any part of his decedent's assets, and the court shall finally adjudge and decree in favor of the allegations of the petition, in whole or in part, it shall order an additional inventory or list of debts, as the case may be, to be returned by the executor, administrator, or collector, and appraisement to be made accordingly, to comprehend the assets omitted, and the court may compel obedience to said order, and, if the same is not complied with, revoke the letters testamentary or of administration or of collection and order the bond of the executor, administrator, or collector to be put in suit.

See section 122.

Petition charging executor with concealing assets is a pleading only and not evidence; and executor is entitled to his day in court—in other words, to a trial upon the evidence. *Brosnan v. Brosnan*, 53 App. D. C. 149 (1923); 51 W. L. R. 454, citing *Guthrie v. Welch*, 24 App. D. C. 562; 33 W. L. R. 162, *Williams v. Williams*, 24 App. D. C. 214.

Mann v. McDonald, 3 App. D. C. 456 (1894); 22 W. L. R. 385.

SEC. 125. JOINT EXECUTORS.—If, any joint executor, administrator, or collector shall apprehend that he is likely to suffer by the negligence or misconduct in the administration or the improper use or misapplication of the assets of the estate by any coexecutor, coadministrator, or cocollector, he may make complaint to said court; and if said complaint shall be adjudged well founded, the court shall have authority, in its discretion, to revoke the powers and authority of the executor, administrator, or collector so complained of and to compel the delivery and surrender to the remaining executor, administrator, or collector of the assets and all books, papers, and evidences of debt of the estate that may be in the possession or control of the person so dismissed from the administration; and the remaining executors, administrators, or collectors shall be entitled to recover, in an action on the case, for any loss or damage they may suffer through the executor, administrator, or collector whose powers shall have been revoked as aforesaid.

SEC. 126. ENFORCEMENT OF DUTY.—The court shall have power to order any executor, administrator, collector, guardian, or testamentary trustee, who appears to be in default in respect to the rendering of any inventory or account or the fulfillment of any duty in said court to be summoned to appear therein and fulfill his duty in the premises, on pain of revocation of his power to act; and on his appearing the court may pass such order as may be just; and upon his failure to appear, after having been duly summoned, may revoke his power to act and make such further order and other appointment as justice may require. In case the summons to appear is returned by the marshal 'not to be found,' an alias summons shall be mailed to the last known post-office address of such fiduciary or served upon his attorney of record, if he be within the jurisdiction of the court; and on the failure of such fiduciary to appear, the court may revoke his power to act and make such further order and other appointment as justice may require.

See sections 124, 369.

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 557), repealing 31 Stat. L., p. 1189.

SEC. 127. REVOCATION OF LETTERS.—Whenever said court shall revoke letters testamentary or of administration or of collection or of guardianship, it shall be the duty of the party whose letters may be revoked to render forthwith an account of his administration or guardianship up to the period of the rendition of said account and to deliver and turn over to the person appointed in his place all the estate, money and effects remaining in his hands that were received and held by him by virtue of his appointment so revoked; and all moneys in the hands of an executor, administrator, or collector realized by him by the sale of the specific property shall be considered unadministered assets and be turned over in like manner; and the court may compel the performance of said duty in the manner herein-after mentioned, and may direct the bond of said executor, administrator, or collector whose letters may be revoked to be put in suit for the use of the new administrator or collector appointed in his place.

See section 290.

Brosnan v. Brosnan, 53 App. D. C. 149 (see sec. 124 supra).

In re Estate of Coit, 3 App. D. C. 246 (1894); 22 W. L. R. 319.

SEC. 128. COUNTER SECURITY.—If any surety of an executor or administrator shall apprehend himself to be in danger of suffering from the suretyship, he may apply to the probate court, and the said court may call upon the party to give counter security, to be approved by the court; and if the party so called on shall not, within a fixed reasonable time, give counter security, the court may order the property remaining in the hands of such executor or administrator to be delivered up to such surety, and the court may enforce the delivery by proper process; and an inventory of the property delivered to such surety shall be returned without delay, and the property contained in such inventory shall be by the said surety sold, distributed, and delivered up, as the case may require, under the immediate order of the court, as if such surety were executor or administrator; but inasmuch as it would be inconvenient to creditors and others interested in the estate, if there should be a double administration, the executor or administrator shall go on to discharge his trust, unless the court revoke his letters for some just cause, as hereinbefore directed, and he shall be answerable for the property in the same manner as if it were not on his default as aforesaid delivered to the surety; and he shall be entitled to sue the said surety and recover damages in case he shall suffer from the misconduct of such surety, in diminishing any part of the property, without obtaining an allowance for the same from the court; and the said surety shall bring into court, to be deposited with the register of wills, the money arising from the sale of any property as aforesaid, to be applied according to the meaning of this code.

See sections 154, 1572.

Act of Maryland of 1798, ch. 101, subch. 14, sec. 11; Comp. Stat. D. C. p. 40, sec. 177.

Term "property" as herein used includes the proceeds of the sale of property. Estate of McKnight, 1 App. D. C. 28 (1893); 21 W. L. R. 587.

SEC. 129. ENFORCEMENT OF JUDGMENTS, AND SO FORTH.—The said court, in addition to the powers herein specially conferred, shall have power to enforce its judgments, orders, and decrees in like manner as orders and decrees may be enforced in the equity court.

32 Stat. L. pt. 1, p. 526.

Act of Maryland of 1789, ch. 101, subch. 15, sec. 12; Comp. Stat. D. C. p. 300, sec. 50.

SEC. 130. CITATION.—Upon the filing of a petition for probate of a will a citation shall be issued to all persons who would be entitled to or interested in the estate of the testator in case such will had not been executed to appear in said court on a day named, not earlier than ten days, exclusive of Sundays, after the filing of said petition, and show cause why the prayer of the petition should not be granted. If said citation shall appear from the return thereof to have been served upon all said persons at least five days before the day named as aforesaid, the said court shall proceed, if no caveat be filed, to take the proofs of the execution of said will. But if any of the parties interested, as aforesaid, as heirs, next of kin, or otherwise, shall be returned "Not to be found," the said court shall cause not less than thirty days' notice of the application of such probate to be published once in each of three successive weeks in some newspaper of general circulation in said District, and may order such other publica-

tion as the case may require, and shall cause a copy of such publication to be mailed to the last known post-office address of each of the parties so returned not to be found.

In all cases where it is made to appear to the satisfaction of the court that all or any of the next of kin or heirs at law of the deceased are unknown, such unknown next of kin or heirs at law may be proceeded against and described in the publication of notice hereinbefore provided for as "the unknown next of kin," or "the unknown heirs at law," as the case may be, of the deceased, and by such publication of such notice under such designation such unknown next of kin and heirs at law shall be as effectually bound and concluded as if known and their names were specifically set forth in said order of publication.

In case any will shall have been heretofore admitted to probate upon publication against unknown heirs or next of kin, any person interested may file a petition for further probate of such will, alleging that the heirs at law or next of kin of the deceased, or some of them, as the case may be, are unknown, and upon satisfactory showing being made to the court publication of notice may be made against the unknown next of kin or heirs at law of the deceased; and upon such publication being made, as required by the court, a decree may be made confirming such previous probate, and such decree so made shall be as effectual as if the said heirs at law or next of kin were named in the order of publication.

See sections 135, 136, 137.

32 Stat. L. pt. 1, p. 526.

Act of June 8, 1898, sec. 4 (30 Stat. L. 434)

Act of Maryland of 1798, chap. 101, subch. 2, secs. 5-8; Comp. Stat. D. C. p. 560, secs. 21 et seq.

Citation may be waived, see sec. 135, and such waiver of citation does not estop the filing of a caveat. *Bowen v. Howenstein*, 39 App. D. C. 585 (1913); 40 W. L. R. 782.

Petition alleged widower as only next of kin, upon whom service was had. He appeared, filed a caveat, and the will was sustained. Thereafter publication was had for unknown heirs, and widower moved to vacate the verdict on the ground that court was without jurisdiction because of failure to publish before framing of issues. Held that jurisdiction attached to any person who voluntarily appeared. *Lewis v. Luckett*, 32 App. D. C. 188 (1908); 36 W. L. R. 795, affirmed 221 U. S. 554 (citing *Dugan v. Northcutt*, 7 App. D. C. 351 (1895); 24 W. L. R. 2.

SEC. 131. PROBATE.—On the day appointed as aforesaid, or such subsequent day as the court may appoint, due proof of such publication and mailing being made, the court shall proceed to take proof of the will. All the witnesses to such will who are within the District and competent to testify must be produced and examined, or the absence of any of them satisfactorily accounted for.

"In all cases the subscribing witnesses, if living and within the jurisdiction, must be called to prove the fact of execution; and if it appears from their evidence that the will was formally executed and the testator competent, it must be admitted to probate." *Lipphard v. Humphrey*, 28 App. D. C. 355 (1906); 34 W. L. R. 788, affirmed 209 U. S. 264. Same rule applies in cases of illiterate testators. *Ib.*

"When any of the witnesses to a will has died, proof of his signature is sufficient prima facie proof of attestation of the will by him. *Keely v. Moore*, 22 App. D. C. 9 (1903); 31 W. L. R. 339, affirmed 196 U. S. 38.

SEC. 132. ATTESTING WITNESSES.—In case the will contains a devise of real estate, and any attesting witness thereto residing in the District is unable, from sickness, age, or other cause, to attend court, the register of wills may, with such will, attend upon said witness and take his testimony. If the testimony of resident attesting witnesses or witness to such will shall have been taken, and any other such witness to said will shall reside out of the District or be temporarily absent therefrom, but within the United States, it shall be sufficient to prove the signature of such witnesses so out of the District.

If the sole witnesses to such will shall be out of said District as aforesaid, or if one or more should be within the United States and one or more be in some foreign country, then it shall be sufficient to take the testimony of any one or all within the United States, as the court may determine, and to prove the signatures of those whose testimony is not required to be taken.

If all such witnesses shall be out of the United States, then it will be sufficient to take the testimony of such of them as the court may require, and to prove the signature or signatures of the others.

The testimony of such witnesses out of the District to be taken hereunder shall be under a commission issued by the court to one or more competent persons, and in such case the original will or codicil shall accompany the commission and be exhibited to the witnesses.

No notice need be given of the time and place of taking such testimony, unless in a case in which probate is opposed.

See sections 131, 134; cf 26, 144, 922, 1058, 1060.

Depositions can be substituted for oral testimony only by statutory authority. *Hutchins v. Hutchins*, 41 App. D. C. 367 (1914); 42 W. L. R. 24. As to method of taking testimony of witnesses residing beyond the sovereignty of the U. S. See *ib.*

"Section 132 of the code specifically provides that, if the testimony of the resident witness is taken and any other witness resides out of the District, it shall be sufficient to prove the signature of such nonresident witness, and that the will shall thereupon be admitted to probate." *Scott v. Herrel*, 31 App. D. C. 45 (1908); 36 W. L. R. 295.

See *Lipphard v. Humphrey*, section 131, *supra*. *Robinson v. Duvall*, 27 App. D. C. 535 (1906); 34 W. L. R. 446.

SEC. 133. WHO MAY APPEAR.—Any person, although not cited, who may be interested in sustaining or defeating the will may appear and support or oppose the application to admit the same to probate.

Act of June 8, 1898, sec. 5 (30 Stat. L. p. 434).

"Any interest, however slight, is sufficient to entitle a party to oppose a testamentary paper, and for like reason, such interest entitles a party to insist upon probate." *Vestry v. Bostwick*, 8 App. 452 (1896); 24 W. L. R. 310.

SEC. 134. ADMISSION TO PROBATE.—If, upon hearing the proofs submitted, the court shall be of opinion that the will was duly executed and the testator was competent to execute the same, and no caveat shall be filed against the admission of the same to probate, the court shall decree that the said will be admitted to probate and record.

Bowen v. Howenstein, 39 App. D. C. 585 (see sec. 130, *supra*).

Lipphard v. Humphrey, 28 App. D. C. 355 (1906). (See sec. 131, *supra*.)

SEC. 135. If all parties interested adversely to the will shall waive the notice aforesaid and consent that the will be admitted to probate and record, it may be so admitted to probate and record without the proceedings directed as aforesaid: *Provided*, That in no case shall

any will or testament be admitted to probate and record save upon formal proof of its proper execution.

Act of June 8, 1898, sec. 4 (30 Stat. L. 434).

Probate court has exclusive jurisdiction to take proof of wills and to admit the same to probate and record. *Gracie v. Trust Co.*, 51 App. D. C. 141 (1921); 50 W. L. R. 5.

Waiver of citation does not preclude subsequent filing of caveat, *Bowen v. Howenstein*, 39 App. D. C. 585 (1913); 40 W. L. R. 782, but does bring party within jurisdiction of court. *Fardon v. Trust Co.*, 44 App. D. C. 69 (1915); 43 W. L. R. 712.

Admission by caveator of formal execution of will does not dispense with necessity for proof thereof. *Trust Co. v. Heiberger*, 19 App. D. C. 506 (1902); 30 W. L. R. 309.

SEC. 136. CAVEAT.—If, upon or prior to the hearing of the application to admit the will to probate, any party in interest shall file a caveat in opposition, duly verified, and setting forth facts inconsistent with the validity of the will, the said will shall not be admitted to probate until the issues raised by said caveat shall be determined, as hereinafter directed.

See section 130.

Hutchins v. Hutchins, 49 App. D. C. 118 (1919) (see sec. 119, supra).

"Equity furnishes the only complete remedy in the exceptional class of cases * * * where the complex relief sought consists in setting aside a deed and will embracing the same property and the same parties, enjoining the beneficiaries * * * and declaring them trustees * * * with a general order for an accounting. 'This is true, even though there be * * * an adequate statutory remedy (D. C. Code, secs. 136, 137).' *Karrick v. Landon*, 41 App. D. C. 416 (1914); 42 W. L. R. 146.

Vestry v. Bostwick, 8 App. D. C. 452 (see sec. 133, supra).

SEC. 137. If, upon the hearing of the application to admit a will to probate, the court shall decree that the same be admitted to probate, any person in interest may file a caveat to said will and pray that the probate thereof may be revoked at any time within three months after such decree, if it be a will of personal property, and as far as it is a will of personal property; and if it be a will of real estate, and as far as it is such will of real estate, any person interested actually served with process or personally appearing in such proceedings may file such caveat within one year after such decree; any person interested who at said time was returned "Not to be found" and was proceeded against by publication may file such caveat within two years after such decree; and any person interested who at the time of said decree is within the age of twenty-one years may file such caveat within one year after he becomes of age.

Act of June 8, 1898, sec. 5 (30 Stat. L. 434).

Waiver and consent does not deprive any person of right to file a caveat. *Fardon v. Trust Co.*, 44 App. D. C. 69 (1915); 43 W. L. R. 712, citing *Bowen v. Howenstein*, 39 App. D. C. 585. Signing of waiver constitutes appearance, but, by leave of court, same may be withdrawn. *Ib.* Signing of waiver brings one within one year limitation, notwithstanding fact that there was a subsequent order of publication. *Ib.*

"The interest which a person must possess to enable him to assail the validity of a will is such that, had the testator died intestate, he would have been entitled to a distributive share in the estate." *Angell v. Groff*, 42 App. D. C. 198 (1914); 42 W. L. R. 263. As to right of heirs of one presumptively dead to file caveat, see *ib.*

See *Karrick v. Landon*, 41 App. D. C. 416 (sec. 136, supra).

"The object of the section is to extend to the persons coming within its description a certain period within which to contest a will that has been regu-

larly admitted to probate. As to them the probate is not a finality until the expiration of the prescribed periods. Until then the right to the caveat is absolute." *Craighead v. Alexander*, 38 App. D. C. 229 (1912) ; 40 W. L. R. 114. As to effect of fraud in procuring waiver, see *ib.*

Quaere: Whether receipt of legacy under will works an estoppel to file a caveat and effect of offer to return the same. *Craighead v. Alexander*, *supra*.

SEC. 137a. While issues raised by a caveat are pending, either for trial or on appeal, no prior will shall be admitted to probate.

Interpolated by act of April 19, 1920 (41 Stat. L. pt. 1, p. 557).

SEC. 138. INFANTS INTERESTED.—Whenever it shall appear that any party interested as aforesaid is under age, or non compos, the court shall appoint a guardian ad litem to represent said party at the hearing of the application to admit the will to probate, and with authority to file a caveat, as he may be advised, in behalf of said party.

See sections 91, 102, 104, 162.

Act of June 8, sec. 6 (30 Stat. L. p. 434).

SEC. 139. PLENARY PROCEEDINGS.—The court may, in all cases of controversy therein, direct a plenary proceeding to be had, by bill or petition, to which there shall be answer under oath, which may be compelled by the usual process, and all the depositions shall be taken down in writing and filed; or, if either party shall require it, the court shall direct an issue to be made up to be tried by a jury.

Act of Maryland of 1798, ch. 101, subch. 15, secs. 16, 17; Comp. Stat. D. C. p. 301, secs. 54, 55.

SEC. 140. TRIAL OF ISSUES AS TO WILLS.—Whenever any caveat shall be filed, issues shall be framed under the direction of the court for trial by jury: *Provided*, That in all cases in which all persons interested are sui juris and before the court the issues may be tried and determined by the court, without a jury, upon the written consent of all such parties. If they are to be tried by a jury, they shall be triable in said probate court by petit jurors drawn for service in the Supreme Court of the District of Columbia; and at least ten days prior to the time of trial all of the heirs at law or next of kin of the decedent, or both together, as the case may require, and all persons claiming under the will in question, or any other instrument on file purporting to be a will of the decedent, shall be each served with a copy of said issues and a notification of the time and place of the trial thereof. If any one of them be an infant or of unsound mind he shall have a guardian ad litem appointed for him by the court before such trial shall proceed. If, as to any party in interest, the notification shall be returned "not to be found," the court shall assign a new day for such trial, and shall order publication, at least twice a week for a period of not less than four weeks, of the substance of the issues and of the date fixed for the trial thereof in some newspaper of general circulation in the District, and may order such further publication as the case may require. And the Supreme Court of the District of Columbia may from time to time prescribe and revise rules and regulations for service personally upon such party outside of the District of Columbia of a copy of such issues and notification. Personal service on absent parties shall not be essential to the jurisdiction of the court. The proceeding for

impaneling a jury for the trial of said issues shall be the same as if they were being tried in the circuit court. In all cases in which such issues shall be tried the verdict of the jury and the judgment of the court thereupon shall, subject to proceedings in error and to such revision as the common law provides, be *res judicata* as to all persons; nor shall the validity of such judgment be impeached or examined collaterally.

See section 105.

Act of June 8, 1898, sec. 6 (30 Stat. L. p. 434).

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 557), repealing 31 Stat. L., p. 1189, as amended by 32 Stat. L. pt. 1, p. 526.

Morris v. Foster, 51 App. D. C. 238 (1922); 50 W. L. R. 178 (see sec. 290 *infra*).

"In the District of Columbia, under a caveat to a will challenging the mental capacity of the testator, whether before or after the will has been admitted to probate, the burden of proof on the issue whether the testator * * * was of sound and disposing mind and capable of executing a valid deed or contract, is upon the caveator." *Brosnan v. Brosnan*, 68 L. ed., adv. page 132 (1923).

Order framing issues is interlocutory only, and reviewable only by special appeal. *Hutchins v. Hutchins*, 40 App. D. C. 180 (1913), citing *Trust Co. v. Sweeney*, 3 App. D. C. 401; *Trust Co. v. Heiberger*, 19 App. D. C. 506; *Dugan v. Northcutt*, 7 App. D. C. 351.

Prohibition will not lie to stay proceedings under an order framing issue for trial by jury. In *re Dahlgren*, 30 App. D. C. 588 (1908); 36 W. L. R. 198.

As to appearance at time of fixing date of trial as waiver of notice, see *Storey v. Storey*, 30 App. D. C. 41 (1907); 35 W. L. R. 463.

As to publication required, see *Leach v. Burr*, 17 App. D. C. 128 (1900); 28 W. L. R. 782, affirmed in 188 U. S. 510 (see sec. 108, *infra*).

SEC. 141. RE-PROBATE OF WILLS AFFECTING REAL ESTATE.—That the foregoing sections shall not apply to wills and testaments offered for probate prior to the eighth day of June, anno Domini eighteen hundred and ninety-eight, and in cases of intestacy shall apply only to the estates of such persons as shall have died after said date and shall hereafter die: *Provided*, That any person interested under any will filed in the office of the register of wills for the District of Columbia prior to said date may offer the same for probate as a will of real estate, whereupon such proceedings shall be had as by this code are authorized in regard to wills offered for probate after said date.

Act of June 8, 1898, sec. 8 (30 Stat. L. p. 434).

This section is premissive and not mandatory. *Young v. Norris Peters Co.*, 27 App. D. C. 140 (1906); 34 W. L. R. 240.

Beyer v. Le Fevre, 17 App. D. C. 238; 28 W. L. R. 863 (1900), reversed in 186 U. S. 114.

Leach v. Burr, 17 App. D. C. 238 (1900); 28 W. L. R. 782, affirmed in 188 U. S. 510.

SEC. 142. TRIAL OF OTHER ISSUES.—The trial of other issues pending in said court than such as relate to the execution or validity of wills shall also be had in said court. For the trial of issues not relating to wills the justice holding said court shall have authority to fix the time of trial and determine the notice thereof to be given.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 526.)

Overby v. Gordon, 13 App. D. C. 392; 26 W. L. R. 722 (1898), affirmed in 177 U. S. 214.

SEC. 143. COSTS.—The said court shall have authority to render judgment for costs against the unsuccessful party in any *proceeding* conducted in said court and to issue execution therefor.

32 Stat. L. pt. 1, p. 526.

Act of Maryland of 1798, ch 101, subch. 15, sec. 17; Comp. Stat. D. C., p. 302, sec. 55.

Court has discretionary power, notwithstanding this section, to award costs to the party in their opinion entitled thereto. *Hutchins v. Hutchins*, 48 App. D. C. 286 (1919); 47 W. L. R. 18.

Manning v. Childress, 48 App. D. C. 256 (1919); 47 W. L. R. 23, following *Hutchins v. Hutchins*, *supra*.

SEC. 144. DEPOSITIONS, JUDGMENT, AND APPEAL.—The said court shall have authority to issue commissions to take the testimony of nonresident witnesses, and such depositions, as well as depositions *de bene esse*, taken according to law, may be read at the trial of any issue in said court. On the trial of any such issue exceptions may be taken to the rulings of the court, and the said court may set aside the verdict and grant a new trial for the same causes and in the same manner as in case of a trial in the circuit court. Unless *and until* the same be reversed, any final order or decree admitting a will to probate shall be conclusive evidence of the validity of such will in any collateral proceeding in which such will may be brought into question, and a transcript of the record of such will, and of the decree admitting the same to probate, shall be sufficient proof thereof.

32 Stat. L. pt. 1, p. 526.

SEC. 145. ARBITRATION.—The said court shall have power, with the consent in writing of both parties, to arbitrate between a complainant and an executor or administrator, or between an executor or administrator and a person against whom the estate represented by him has a claim, or, with like consent, may refer the matter in dispute to an arbitrator. If reserved by the parties in their submission, exception as to matters of law may be filed to the award of such arbitrator, and the court may confirm or overrule the award, and said award, when confirmed, shall be conclusive between the parties.

Act of Maryland of 1798, ch. 101, subch. 8, sec. 12; Comp. Stat. D. C., p. 24, sec. 98.

SEC. 146. SALE OF REAL ESTATE.—The said court shall have plenary authority to administer also the real estate situated in the District of Columbia of decedents so far as may be necessary for the payment of debts and legacies, and to distribute among those entitled thereto any surplus proceeds of any sale of real estate made in the course of such administration, and the bonds hereafter executed of all executors and administrators shall be responsible for the proceeds of sale of all real estate sold by them under the order of the said justice for such purposes of administration: *Provided, however*, That no such sale shall be made unless the same be required for the purposes of paying debts and such legacies as are chargeable upon the real estate, nor until the auditor of the court shall have ascertained and reported *such debts and legacies, the deficiency of personal assets, and the real estate necessary to be sold for the payment of debts and legacies*; and such report shall be subject to exception.

See sections 96, 119.

32 Stat. L., part 1, page 527.

Act of June 8, 1898, sec. 7 (30 Stat. L. 434).

Prior to the enactment of the Code, the Supreme Court of this District had "jurisdiction and power to decree the sale of the real estate of a deceased

debtor, whether the title be legal or equitable, for the payment of debts; and upon the allegation that the deceased was seized * * * and died indebted, there would be furnished a foundation for a decree of sale of such real estate." *Duncanson v. Manson*, 3 App. D. C. 260 (1894); 22 W. L. R. 321, affirmed, 166 U. S. 533. If the court had jurisdiction, the sale can not be attacked collaterally. *Ib.*

See *Hansel v. Chapman*, 2 App. D. C., 361 (1894); 22 W. L. R. 140.

See brief of William Clark Taylor, Esq., in *Estate of Ambrose*, Admr. No. 26071.

SEC. 147. An order for the sale of the real estate shall not be granted if any of the persons interested in the estate shall give bond to the United States, with security to be approved by said court, conditioned to pay all the debts or legacies, or both, as the case may be, that shall eventually be found due, and the costs of administration.

Wyncoop v. Shoemaker, 37 App. D. C. 258 (1911); 39 W. L. R. 462.

SEC. 148. If the said court shall be satisfied, upon a report of the auditor, that it is necessary to sell said real estate, or part thereof, it shall authorize the same, or so much thereof as may be necessary for the payment of the debts or legacies, or both, to be sold by the executor or administrator, on such terms as the court may direct. Any surplus of the proceeds of such sale, after payment of debts and legacies and costs of administration, shall be deemed real estate, and shall be distributed among the heirs or devisees as the right may appear.

SEC. 149. WIDOW'S DOWER.—Where there shall be a widow entitled to dower in the real estate of the decedent, the court, before authorizing a sale of said real estate, shall issue a commission to one or more suitable persons to set off and assign her dower out of such estate, and her dower shall be assigned to her; or, if the court shall find the widow's dower can not be set off without injury to the property, if she shall consent thereto by her answer to the petition, the real estate may be sold free of her dower, and she shall receive out of the proceeds a commutation of her dower according to the practice in equity.

See sec. 89.

SEC. 150. GUARDIANS.—The said court shall have power to appoint a guardian or guardians to any infant orphan entitled to any property, real, personal, or mixed, within the District, or whose person and residence may be within the District, except where such orphan may have a testamentary guardian.

See sections 1125 et seq.

R. S. D. C., sec. 937, Comp. Stat. D. C. p. 255, sec. 20.

"The courts of the District of Columbia have no authority to appoint guardians of the persons of infants who do not reside and are not domiciled within their territorial jurisdiction." *Lehmer v. Hardy*, 52 W. L. R. 19 (1923) (Court of Appeals). A guardian of the estate should be appointed "in accordance with the laws of the place in which the property is found." *Ib.*

SEC. 151. BOND.—The court shall require of guardians so appointed, and of testamentary guardians, unless it be otherwise directed by the will appointing them, bond, with sufficient security, conditioned for the due discharge of their duties.

R. S. D. C., sec. 938, Comp. Stat. D. C. p. 255, sec. 21.

SEC. 152. When any infant whose father or mother may be living shall, by gift or otherwise, be entitled to any property, the court may require the father or mother, as guardian, to give bond and security to account for the property, and on his or her failure or refusal so to do may appoint another person guardian, who shall give bond as in other cases.

R. S. D. C, secs 939, 940, Comp. Stat. D. C. p. 255, secs. 22-23.

SEC. 153. The court may at any time require any guardian to give bond or additional bond, when the interests of the infant require it, and on his failure or refusal so to do may revoke his appointment and appoint another guardian in his place, and require the estate of the infant to be forthwith delivered to the newly appointed guardian, and may direct him to bring suit upon the bond of his predecessor.

R. S. D. C., secs. 941, 943, Comp Stat. D. C. p. 255, secs. 24-25.

SEC. 154. COUNTER SECURITY.—If any surety of a guardian shall by petition set forth that he apprehends himself to be in danger of loss in consequence of his suretyship, and shall pray the court that he may be relieved, the court, after summoning the guardian to answer said petition, may require him to give counter security to indemnify his original surety or to deliver his ward's estate into the hands of the surety or of some other person; in either of which cases the court shall require sufficient security to be given by the person into whose hands said estate shall be delivered, and make such other order as may seem just.

See sections 128, 1572.

R. S. D. C., sec. 945, Comp. Stat. D. C. p. 256, sec. 28.

SEC. 155. ELECTION OF GUARDIAN.—Every orphan or other infant to whom said court is authorized to appoint a guardian shall be entitled, on arriving at the age of fourteen years, notwithstanding any appointment of guardian before made by the court, to elect a guardian for himself; but such guardian must be approved by the court and shall be required to give bond as in other cases, and be subject to the control of the court as other guardians are.

See section 1130.

R. S. D. C., secs. 946, 947, Comp. Stat. D. C. p. 256, secs. 29-30.

SEC. 156. SALE OR EXCHANGE OF INFANT'S REAL ESTATE.—Whenever the guardian or, in case of his refusal to act, a next friend of any infant shall deem that the interests of the ward will be promoted by a sale of his freehold or leasehold estate in lands, for the purpose of reinvesting the proceeds in other property, or by an exchange of his said property for other property, he may file a bill in said court, verified by his oath, setting forth all the estate of said infant, real and personal, and all the facts which, in his opinion, tend to show whether the infant's interest will be promoted by said sale or exchange or not.

See sections 162, 165, 1136.

R. S. D. C., secs. 957, 958, Comp. Stat. D. C. p. 257, secs. 40-41.

Morse v. U. S., use of Hine, 29 App. D. C. 433 (1907) 35 W. L. R. 334; reversed in 218 U. S. 493.

See also Thaw v. Fall, 136 U. S. 519 (1890).

SEC. 157. The infant, together with those who would succeed to the estate if he were dead, shall be made parties defendant; and it

shall be the duty of the court to appoint some fit and disinterested person to be guardian ad litem for the infant, who shall answer the bill under oath. The infant also, if above the age of fourteen, shall answer the bill in proper person, under oath."

R. S. D. C., sec. 959, Comp. Stat. D. C. p. 257, sec. 42.

SEC. 158. Every fact material to determine the propriety of such sale or exchange shall be clearly proved by disinterested witnesses, whose testimony shall be taken in writing in the presence of the guardian ad litem or upon interrogatories agreed upon by him.

R. S. D. C., sec. 960, Comp. Stat. D. C. p. 257, sec. 43.

SEC. 159. If the court shall be satisfied from the evidence that the interests of the infant require a sale or exchange, as prayed, and the rights of others will not be violated thereby, such sale or exchange may be decreed, and the costs of the suit shall be paid out of the infant's estate; otherwise they shall be paid by the complainant.

R. S. D. C. secs. 961, 962, Comp. Stat. D. C. p. 258, secs. 44, 45.

SEC. 160. Any such sale may be made upon such terms as to cash and credit as the court may direct, and a lien shall be retained on the property sold for the purchase money; and the proceeds of such sale shall be invested for the infant's benefit in other real estate or in such other manner as the court may direct; and if the infant, after any such sale, shall die intestate or under twenty-one years of age, the proceeds of such sale, or so much thereof as may remain at his death, if not reinvested in other real estate, shall be considered as real estate, and shall pass accordingly to such persons as would have been entitled to the estate if it had not been sold.

R. S. D. C., secs. 965-968, Comp. Stat. D. C., secs. 48-51.

SEC. 161. In decreeing an exchange of the infant's estate for other property the court shall not be bound to require equality or sameness in the quantity or character of the estate or interest, and the court may appoint trustees to execute the deeds necessary to carry such exchange into effect.

SEC. 162. SALE OF PARTICULAR ESTATE OR REMAINDER.—Where an infant is entitled to a particular estate, as for life or years, and another person is entitled to an estate in remainder or reversion *or executory devise* in the same property, or such other person is entitled to the particular estate and the infant is entitled in remainder or reversion or by way of executory devise, the court shall have the same power to decree a sale or exchange as aforesaid, having reference solely to the interests of the infant: *Provided*, The other person so interested will consent to such sale or exchange and execute the conveyances necessary to carry the same into effect. And the court shall direct the annual income from the fund or property acquired by such sale or exchange to be applied according to the interests of the respective parties. And in case of the death of said infant under twenty-one years of age the proceeds of any such sale not invested in real estate shall be deemed real estate and pass to those who would be entitled if the property had not been sold.

See section 100.

32 Stat. L., pt. 1, p. 527.

Morse v. U. S., use Hine, 29 App. D. C. 433 (see sec. 156 supra).

See Trust Co. v. Muse, 4 App. D. C. 12 (1894); 22 W. L. R. 409, reversed in 218 U. S. 493.

SEC. 163. LEASE OF INFANT'S ESTATE.—In cases where it shall appear to the court that it will be to the advantage of the infant that his real estate shall be demised, the said court shall have the power to decree that the same be so demised for a term of years not to exceed the minority of the infant, yielding such rents and on such terms and conditions as the court may direct: *Provided*, That where the infant is entitled to only a part of the estate as tenant in common, joint tenant, tenant of the particular estate, or remainderman, or otherwise, all the owners of the other interests assent to the passing of such decree.

See section 156, 1135.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 527), repealing 31 Stat. L. p. 1189. Easterling v. Horning, 30 App. D. C. 225, 232 (1908); 36 W. L. R. 53.

Orphan's court had power to authorize sale of minor's realty for his support, and hence power to authorize a mortgage. Middleton v. Parke, 3 App. D. C. 149 (1894); 22 W. L. R. 265.

SEC. 164. MORTGAGE OF INFANT'S ESTATE.—In cases where it shall appear to the court by proof that it would be for the benefit and advantage of the infant to raise money by mortgage *for his maintenance* or to improve his real property or to pay off charges, liens, or incumbrances thereon, the court may, on the application of the guardian or of the infant by next friend, decree a conveyance of said property, by mortgage or deed of trust, to be executed by the guardian, on such terms as may seem to the court expedient; and this section shall apply to cases where the infant holds jointly or in common with other persons of full age or holds a portion of the estate, as a particular estate, for life or years or in remainder or reversion: *Provided*, That the other owners interested, all being of full age, will consent to such decree and unite in said mortgage or deed of trust.

See authorities quoted under section 163, supra.

SEC. 165. SALE OF INFANT'S PRINCIPAL FOR MAINTENANCE, AND SO FORTH.—Wherever it shall appear, upon the petition of the infant by next friend or of the guardian of an infant, and the appearance and answer of such infant by guardian to be appointed by the court, and proof by depositions of one or more disinterested witnesses, that a sale of the principal of the infant's estate, or of some part thereof, whether real or personal, is necessary for his maintenance or education, regard being had to his condition and prospects in life, the said court may decree such sale on such terms as to it may seem proper.

See sections 156 et seq.

See authorities quoted under section 163, supra.

32 Stat. L. 527.

SEC. 166. INDIGENT BOYS.—The court shall have power to appoint guardians to indigent boys for the purpose of securing their enlistment in the naval or marine service of the United States, as provided by law, free of all costs on account of such proceeding.

[SEC. 167. LUNACY PROCEEDINGS.—All writs de lunatico inquirendo shall issue from said probate court, and the justice holding said court shall preside at all inquisitions of lunacy, and, when necessary, may use a jury from either the circuit or criminal court, or may cause a special jury to be summoned for such inquisitions.]

Repealed by act of June 30, 1902 (32 Stat. L. pt. 1, p. 527).

See sections 115a et seq.

§SEC. 168. ESTATES OF LUNATICS.—The said court shall have full power and authority to superintend and direct the affairs of persons non compos mentis, and to appoint a committee or trustees for such persons, and to make such orders and decrees for the care of their persons and the management and preservation of their estates, including the collection, sale, exchange, and re-investment of their personal estate, as to the court may seem proper. The court may, upon such terms as under the circumstances of the case it may deem proper, decree the conveyance and release of any right of dower of a person non compos mentis, whether the same be inchoate or otherwise.】

Repealed by act of June 30, 1902 (32 Stat. L. pt. 1, p. 527).

See sections 115a et seq.

§SEC. 169. The court shall have the same power in respect of the freehold or leasehold estates of such persons as is provided for in relation to the estates of infants, to be exercised upon the application of the guardian, trustee, or committee of such person; and upon the death of any such person non compos mentis the proceeds of any sale of his estate which may have been invested otherwise than in real estate shall be deemed real estate, and shall descend as the property or estate would if it had not been sold.】

Repealed by act of June 30, 1902 (32 Stat. L. pt. 1, p. 527).

See sections 115a et seq.

§SEC. 170. The said court may order any part of the estate of a person non compos mentis, for whom a committee, guardian, or trustee has been appointed, to be sold, when necessary for his maintenance, upon application of said committee, guardian, or trustee, and full proof of the necessity of such sale. Upon the application of any judgment creditor of a person non compos mentis the court may decree a sale of the real or personal estate of such non compos mentis, or such part thereof as may be necessary to pay the claim of such creditor, upon being satisfied that such claim is just and there are no other means of paying the same.】

Repealed by act of June 30, 1902 (32 Stat. L. pt. 1, p. 527).

See sections 115a et seq.

§SEC. 171. No sales of the property of infants or persons non compos mentis made by authority of the foregoing sections shall be valid and effectual to pass title to the property sold until they have been reported to and ratified by the court.】

Repealed by act of June 30, 1902 (32 Stat. L. pt. 1, p. 527).

See sections 115a et seq.

§SEC. 172. DRUNKARDS.—Whenever any person residing in said District, and owning any estate, real or personal, situate therein, is unfit from the habitual use of intoxicating liquors to properly manage or control the same, the said court, on the petition of any creditor or relative of such person, or if there be no creditor or relative, upon the petition of any person living in said District, and upon summons being regularly served upon such person so alleged to be unfit to manage or control his property as aforesaid, commanding him to appear and answer such petition, may order a jury to be summoned to ascertain whether such person be an habitual drunkard and unfit from that cause to manage and control his property, and if the jury shall find that such person is an habitual drunkard and unfit to manage or control his property, such finding when confirmed by the court, shall be entered of record in said cause, and it shall be the duty of the court thereupon to appoint some fit person to be committee of the person so declared unfit to manage or control his property as aforesaid.

Such committee before entering upon the discharge of his duties shall execute a bond, with surety, to be approved by the said court or one of the justices thereof, to the United States in a penalty equal to the amount of the personal property and the yearly rents to be derived from the real estate of such person, conditioned for the faithful performance of his duties as such committee; and he shall have control of the said estate, real and personal, with power to collect all debts due said drunkard, and to adjust and settle all accounts owing by him, and to sue and be sued in his representative capacity. He shall apply the annual income of the estate of such habitual drunkard to the support of said person, and the maintenance of his family and education of his children; and shall in all other respects perform the same duties and have the same rights as pertain to committees of lunatics and idiots.

When any person for whom a committee has been appointed under the provisions of this section shall become competent to manage his property on account of reformation in his habits, he may apply to said court to have said committee discharged and the care and control of his property restored to him; and if it shall appear by the verdict of a jury summoned therefor, or by affidavits, or other evidence to the satisfaction of the court, that said applicant is a fit person to have the care or control of his property, an order shall be entered restoring such person to all the rights and privileges enjoyed before said committee was appointed.]

Repealed by act of June 30, 1902 (32 Stat. L. pt. 1, p. 527).

See sections 115a et seq.

SEC. 173. APPRENTICES.—The said probate court shall also have authority to approve contracts of apprenticeship, to determine questions between masters and apprentices, and to protect the rights of apprentices, as herein elsewhere provided for.

See sections 402, 411.

SEC. 174. THE CLERK.—The clerk of said supreme court shall take the oath and give bond, with security, in the manner prescribed by law for the clerks of the district courts of the United States. The said clerk shall have power to appoint assistant clerks *and other necessary employees* at such compensation as may be authorized by the supreme court of the District of Columbia in general term, and may assign any of the assistant clerks in his office to duty in the said general or special terms of the court, except in the probate term. Any of the duties of the clerk may be performed in his name by any of the assistant clerks, and such assistants may sign the name of the clerk to any process, certificate, and other official act required by law or by the practice of the court to be performed by the clerk, and may authenticate said signature by affixing the seal of the court thereto when the seal is necessary to its authentication. In such cases the signature shall be—

_____, Clerk,
By _____, Assistant Clerk.

32 Stat. L., pt. 1, p. 527.

SEC. 175. COSTS.—At the commencement of every suit in said supreme court the plaintiff shall deposit at least ten dollars with the clerk, to be appropriated toward the costs of the suit; and the court is hereby authorized to prescribe rules as to any further costs to be paid by either the plaintiff or defendant during the progress of the case, and as to the collection thereof. Upon the termination of the case any surplus of costs shall be refunded by the clerk.

The defendant in any suit instituted by a nonresident of the District of Columbia, or by one who becomes such after the suit is commenced, may, upon notice served on the plaintiff or his attorney, at any time after service of process on the defendant, require the plaintiff to give security for all costs and charges that may be adjudged against him on the final disposition of the cause. But such right of the defendant shall not entitle him to delay in pleading, and his pleading before the giving of such security shall not be deemed a waiver of his right to require such security for costs. In case of non-compliance with the foregoing requirements, within a time to be fixed by the court, judgment of nonsuit or dismissal shall be entered. The security required may be by an undertaking, with security, to be ap-

proved by the court, or by a deposit of money in amount to be fixed by the court.

A nonresident may, at the commencement of his suit, deposit with the clerk such sum in money as the court shall deem sufficient as security for all costs that may accrue in the cause, which deposit may afterwards be increased on application, in the discretion of the court: *Provided, That for proceedings in the probate court deposits and fees shall be paid to the register of wills, who shall be entitled to demand and may require, upon the presentation for filing of a petition or a caveat to a will, a deposit for his fees to be charged for the proceedings under such petition or such caveat; and upon such deposit becoming exhausted in the liquidation of his fees so charged, he may demand and require a further deposit from the original petitioner or caveator; but such deposits shall not be required in excess of fifteen dollars at any one time.*

32 Stat. L., pt. 1, p. 527.

Sections 175 and 176 "were superseded and repealed by the act of Congress of June 25, 1910 (36 Stat. L. 866, chap. 384)." *Neubeck v. Holmes*, 44 App. D. C. 67 (1915), 43 W. L. R. 725, citing with approval *Hale v. Duckett*, 43 App. D. C. 285.

See Appendix, p. 613.

SEC. 176. POOR SUITORS.—Suits may be prosecuted by poor persons *in the discretion and* upon the order of the court, or of one of the justices, passed upon satisfactory evidence of inability to make such deposit, without making the deposit prescribed by the preceding section.

See authorities cited under section 175.

SEC. 177. COSTS PAYABLE IMMEDIATELY.—All costs and fees for services rendered by the clerk and the register of wills and chargeable to others than the United States shall be payable *in advance* and shall be collected by such rules and regulations, not incompatible with law, as may be prescribed by the court, but shall in no case be paid by the United States. The District of Columbia shall not be required to pay fees to the clerk of the court of appeals of the District, or to the marshal of the District, and shall be entitled to the services of said marshal in the service of all civil process.

Provided, That neither the United States nor the District of Columbia, nor any officer of either, acting in his official capacity, shall be required to give bond or enter into undertaking to perfect any appeal or to obtain any injunction or other writ, process, or order in or of any court in the District of Columbia for which a bond or undertaking is now or may be hereafter required by law or rule of court.

32 Stat. L., pt. 1, p. 527.

Act of June 9, 1910 (36 Stat. L. 464).

As to liability of District of Columbia Commissioners for costs prior to act of June 9, 1910, see *Brown v. Macfarland*, 22 App. D. C. 412 (1903); 31 W. L. R. 541.

SEC. 178. The clerk shall have power to administer oaths in all cases and also to take the acknowledgment of deeds.

32 Stat. L. p. 527.

SEC. 179. SALARY.—The salary and compensation of the clerk shall not exceed the sum of five thousand dollars per annum, and the excess of fees received by him above said salary, after defraying there-

out the necessary expenses of his office, shall be paid into the Treasury of the United States.

32 Stat. L., p. 609.

SEC. 180. RETURNS TO TREASURY.—The clerk shall make semianual returns of the amount of fees received by him to the Secretary of the Treasury. His accounts of his earnings and expenses shall be adjusted by the regular auditor of the court, or by a special auditor to be appointed by the court for the purpose, within thirty days after the first day of January and July in each year; and the auditor shall immediately report his adjustment to the court, with such exceptions thereto as the clerk shall, within four days after such adjustment, take and file with the auditor. The court shall pronounce such decree upon the report and exceptions as may seem to it equitable and just, and such decree shall be final and binding on the United States and the clerk.

SEC. 181. ACCOUNTING.—If upon such account a balance be found due from the clerk to the United States, the court shall order payment by the clerk into the Treasury, and enforce its order by execution, process of contempt, or otherwise; and if the clerk refuse to pay the money, shall remove him from office.

SEC. 182. If a balance be found due from the United States to the clerk, the same shall be paid (out of the appropriations for fees of clerks of United States courts), upon presenting to the Treasurer a copy of the decree duly certified. The clerk shall, as in other cases to which the United States is a party, furnish the Solicitor of the Treasury a copy of the decree immediately after it is pronounced.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 527), repealing 31 Stat. L., pt. 1, p. 1189.

SEC. 183. UNITED STATES ATTORNEY FOR THE DISTRICT OF COLUMBIA.—There shall be an attorney of the United States for the District, who shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and who shall take the oath and perform all the duties required of district attorneys of the United States.

32 Stat. L., pt. 1, p. 527.

SEC. 184. The district attorney and every assistant or deputy duly appointed by him is empowered to administer oaths or affirmations to witnesses in criminal cases and in all cases where a justice of the peace is authorized to do so; and if any person to whom such oath or affirmation shall be administered shall willfully and falsely swear or affirm touching any matter or thing material to the point in question whereto he shall be examined, he shall be deemed guilty of perjury, and upon conviction thereof shall be sentenced to suffer imprisonment at hard labor for the first offense for not less than two nor more than ten years, and for the second offense for not less than five nor more than fifteen years.

SEC. 185. The clerk, marshal, and district attorney shall attend the criminal court and perform all the duties required of them by law in relation to the criminal business of the court.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 527).

SEC. 186. THE MARSHAL.—There shall continue to be a marshal for the District, who shall be appointed by the President of the United

States, by and with the advice and consent of the Senate, for the same term, take the same oath, give bond with security in the same manner, and have generally, within the District, in addition to the powers and duties herein imposed upon him, the same powers and perform the same duties as provided for by the general statutes relating to marshals of the United States.

Liability of surety on marshal's bond for wrongful levy, *Palmer v. U. S. use Lane*, 41 App. D. C. 341 (1914) ; 42 W. L. R. 53.

After marshal takes possession of property, "the law makes it his duty to exercise reasonable care and diligence in protecting" it; "and it was not the duty of the plaintiff to direct the marshal as to the proper steps to be taken to that end." *Palmer v. Costello*, 41 App. D. C. 165 (1913) ; 42 W. L. R. 26.

SEC. 187. The fees and emoluments herein elsewhere authorized shall be charged for services rendered by the marshal of the District, and collected as far as possible, and covered into the Treasury of the United States; and the said marshal shall be paid in full compensation for all services rendered by him a salary of five thousand five hundred dollars per annum.

SEC. 188. The marshal shall pay to each bailiff and crier, and to each deputy marshal performing the duties of a bailiff or crier, who shall be required to attend upon the several terms of said court, one hundred dollars per month, and to each messenger appointed for the several courts, sixty dollars per month, said payments to be allowed in said marshal's accounts.

SEC. 189. VACANCIES.—In case of a vacancy in the office of United States attorney or marshal for the District of Columbia, the supreme court of the District of Columbia may appoint persons to exercise the duties of such officers until such vacancy shall be filled.

SEC. 190. THE CORONER.—There shall continue to be a coroner of said District, who shall be appointed by the *Commissioners of the District of Columbia* and shall receive a salary of one thousand eight hundred dollars per annum.

32 Stat. L., pt. 1, p. 527.

SEC. 191. BOND.—The coroner before he acts as such shall, within thirty days after his appointment, give bond to the United States, with security to be approved by the said supreme court and deposited with the clerk thereof, in the penalty of three thousand dollars, with a condition that he will well and truly execute the duties of his office, and well and faithfully execute and return all writs or other process to him directed, and will also pay and deliver to the person or persons entitled to receive the same all sums of money and all goods and chattels by him levied upon, seized, or taken, agreeably to the directions of the writ or process under which the same shall have been levied upon, seized, or taken, and shall also satisfy and pay all judgments which may be rendered against him as coroner.

SEC. 192. DUTIES.—It shall be the duty of the coroner to hold an inquest over any person found dead in the District when the manner and cause of death shall not already be known as accidental or in the course of nature. He shall make a monthly report to the Commissioners of the District of all inquests held by him during the month last past before said report, with a description as far as may be of the age, sex, color, and nationality of persons and the causes of their

death, with such particulars as may be necessary to their identification; and as soon as possible after holding such inquest he shall deliver to the property clerk of the police department all moneys and other property and effects found upon the person of anyone on whom he shall hold an inquest.

SEC. 193. He shall not summon any jury of inquest over the body of a deceased person where it is known that the deceased came to his death by accident, mischance, or natural causes.

Act of March 2, 1911 (36 Stat. L., pt. 1, p. 974), adding "suicide," and providing that where it is not known that deceased died by suicide, the coroner may in his discretion summon such jury.

SEC. 194. WITNESSES.—Witnesses may be summoned and compelled by the coroner to attend before him and give evidence, and shall be liable in like manner as if the summons had been issued by a justice of the peace. And it shall be his duty, upon every inquisition taken before him, where any person is charged with having unlawfully caused the death of the person on whom the inquest is held, to reduce the testimony of the witnesses to writing, and if the jury find that murder or manslaughter has been committed on the deceased, he shall require such witnesses as he thinks proper to give a recognizance to appear and testify in said supreme court, and shall return to said court the said inquisition and testimony and recognizance by him taken.

SEC. 195. There shall be paid to the jurors and witnesses who may be lawfully summoned in any inquest the same fees and compensation as are allowed to the jurors and witnesses attending the supreme court. A coroner's jury shall consist of six persons.

SEC. 196. DEPUTY CORONER.—The Commissioners of said District shall have authority to appoint a deputy coroner, who shall assist the coroner in the performance of his duties aforesaid, and shall perform the same duties in case of the absence or disability of the coroner. He shall, while acting, receive compensation at a rate not exceeding five dollars per day, to be paid as other expenses of said District, and he shall give bond in the penalty of two thousand five hundred dollars, with security to be approved by the said supreme court, conditioned for the due performance of his duties.

SEC. 197. WHEN TO EXECUTE PROCESS.—Whenever the marshal is a party to any cause or interested therein, or it is unfit on other grounds that he should serve and execute the process to be issued therein, such process shall be issued to the coroner, and he shall be paid the same fees and compensation for serving and executing the same which would be payable to the marshal in similar cases, and shall account therefor to the Treasury of the United States. And if he shall fail in the proper performance of his duties in the premises, like redress may be had against him, his sureties, and his and their heirs, devisees, and personal representatives, as could have been had against the marshal, his sureties, and his and their heirs, devisees, and personal representatives, for a like failure on the part of said marshal.

See section 198.

SEC. 198. JURY COMMISSION.—There shall be, and there is hereby, constituted a jury commission for the District of Columbia, which shall be composed of three commissioners, who shall be citizens of

the United States and actual residents of the District of Columbia, who have been domiciled therein for at least three years prior to their appointment, and shall be freeholders in the District of Columbia and not engaged in the practice of law, nor at the time of their appointment be a party to any cause then pending in the courts of the District of Columbia. Such commissioners shall be appointed by the Supreme Court of the District of Columbia, in general term, and shall serve for a term of three years and until their successors are appointed and qualified; except that the members first appointed shall serve for one, two, and three years, respectively, as may be designated by said court. Before entering upon the discharge of their duties they shall each take an oath of office to be prescribed by the Supreme Court of the District of Columbia. No person who has served as such commissioner shall be eligible for reappointment within three years of the date of the expiration of his term of service. It shall be the duty of said jury commission to make and preserve a record of the list of names of jurors, both grand and petit, and of commissioners and jurors in condemnation proceedings for service in all the courts of the District of Columbia having cognizance of jury trials and of condemnation proceedings, to place the names in the jury box, and to have custody and control of said jury box, and to draw the names of said jurors and condemnation commissioners from time to time, as hereinafter provided. The compensation of said jury commissioners shall be \$10 each per day for each day or fraction of a day when they are actually engaged in the performance of their duties, not to exceed five days in any one month, which shall be paid by the United States marshal for the District of Columbia out of the appropriation for pay of bailiffs, upon the certificate of said commissioners. The said Supreme Court of the District of Columbia, in general term, shall have power summarily to remove any of said commissioners for absence, inability, or failure to perform his duties as such commissioner, or for any misfeasance or malfeasance, and to appoint another person for the unexpired term. In the event of the illness or other inability or absence from the District of Columbia of any one of said commissioners, the two other commissioners may perform the duties of said jury commission.

Act of April 19, 1920 (41 Stat. L. pt. 1, p. 558) repealing 31 St. L. p. 1189. On construction of prior law, see *Milano v. U. S.*, 40 App. D. C. 379 (1913); 41 W. L. R. 357; also *Clark v. U. S.*, 19 App. D. C. 295 (1902); 30 W. L. R. 70.

SEC. 199. The said jurors shall be selected, as nearly as may be, from the different parts of the District.

Act of April 19, 1920 (41 Stat. L. pt. 1, p. 558) repealing 31 St. L. p. 1189.

SEC. 200. JURY BOX.—The jury commission shall write the names on separate and similar pieces of paper, which they shall so fold or roll that the names can not be seen, and shall place the same in a box to be provided for the purpose.

Act of April 19, 1920 (41 Stat. L. pt. 1, p. 558) repealing 31 St. L. p. 1189.

SEC. 201. The jury commission shall thereupon seal said box and, after thoroughly shaking the same, shall deliver it to the clerk of the Supreme Court of the District of Columbia for safe-keeping;

and the same shall not be unsealed or opened except by said commission.

Act of April 19, 1920 (41 Stat. L. pt. 1, p. 558) repealing 31 St. L. p. 1189.

SEC. 202. TERM OF SERVICE.—The respective terms of service of petit jurors drawn for service in the Supreme Court of the District of Columbia shall begin on the first Tuesday of October, November, December, January, February, March, April, May and June of each year and shall terminate on the Monday preceding the first Tuesday of the next month thereafter, except when the jury shall be discharged by the court at an earlier day, or when a jury shall be empaneled and it shall happen that no verdict shall have been found before the day appointed by law for the commencement of the next succeeding term, in which case the court shall proceed with the trial by the same jury in every respect as if its term of service had not ended; and all proceedings to final judgment, if such judgment shall be rendered, shall be entered and have legal effect and operation as of the term at which the jury shall have been empaneled: *Provided*, That the Supreme Court of the District of Columbia in general term may direct petit jurors to be drawn for monthly service in said court during the months of July, August, and September, such service to begin and terminate as aforesaid.

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 559), repealing 31 St. L., p. 1189.

SEC. 203. That the term of service of the grand jury in the criminal court shall begin with each term of that court and shall end with such term, unless the jury shall be sooner discharged by the court. The foreman of the grand jury shall be selected by the justice presiding over the special term known as criminal division number one from among the jurors, grand and petit, in attendance upon the Supreme Court of the District of Columbia; and, in the event that said foreman is not selected from among the twenty-three grand jurors in attendance, but is selected from among the petit jurors, one of said grand jurors shall be excused as such and transferred to the roll of petit jurors, and the term of service of the foreman so selected of the grand jury shall be concurrent with the term of service of the grand jury.

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 559), repealing 31 Stat. L., p. 1189.

SEC. 204. DRAWING JURORS.—At least ten days before the first Tuesday of each month specified in section 202 when jury trials are to be had, said jury commission shall publicly break the seal of the jury box and proceed to draw therefrom, by lot and without previous examination, the names of such number of persons as the general term of the Supreme Court of the District of Columbia may from time to time direct to serve as petit jurors in the Supreme Court of the District of Columbia; and at least ten days before the commencement of each term of the criminal courts shall in like manner draw the names of twenty-three persons required to serve as grand jurors in said criminal courts, and shall forthwith certify to the clerk of the Supreme Court of the District of Columbia the names of the persons so drawn as petit and grand jurors, respectively.

The distribution, assignment, reassignment, and attendance of said petit jurors among the special terms of the Supreme Court of

the District of Columbia shall be in accordance with rules to be prescribed by said court.

At least ten days before the first Monday in January, the first Monday in April, the first Monday in July, and the first Monday in October of each year the said jury commission shall likewise draw from the jury box the names of persons to serve as jurors in the police court and in the juvenile court of the District of Columbia in accordance with sections 45 and 46 of this code relating to the police court, and sections 14 and 15 of the Act of Congress approved March 19, 1906, creating said juvenile court, and shall also draw from the jury box the names of persons to serve as jurors in any other court in the District of Columbia which hereafter may have cognizance of jury trials, and shall certify the respective list of jurors to the clerk of the Supreme Court of the District of Columbia.

Act of April 19, 1920 (41 Stat. L. pt. 1, p. 559), repealing 31 St. L. p. 1189.

As to construction of prior law, see *Patten v. U. S.*, 42 App. D. C. 239 (1914); 42 W. L. R. 338; *Fletcher v. U. S.*, 42 App. D. C. 53 (1914); 42 W. L. R. 315; *Hyde v. U. S.*, 35 App. D. C. 451 (1910); 38 W. L. R. 646, affirmed in 225 U. S. 347.

SEC. 204a. That whenever the United States attorney for the District of Columbia shall certify in writing to the Chief Justice of the Supreme Court of said District, or, in his absence, to the senior associate justice of said court, that the exigencies of the public service require it, said chief justice or senior associate justice may, in his discretion, order an additional grand jury summoned, which additional grand jury shall be drawn at such time as he may designate in the manner now provided by law for the drawing of grand jurors in the District of Columbia, and unless sooner discharged by order of said chief justice or, in his absence, senior associate justice, said additional grand jury shall serve during and until the end of the term in and for which it shall have been drawn.

Interpolated by act approved May 19, 1922 (42 Stat. L., pt. 1, p. 543).

SEC. 205. If any person whose name is drawn from the box shall have died or removed from the District before or after being selected, or become otherwise disqualified or disabled, the jury commission shall destroy the slip containing the name of such person, and in such case the jury commission shall draw from the box the name of another person to serve in his stead.

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 560), repealing 31 Stat. L., p. 1189.

SEC. 206. After the requisite number of jurors shall have been drawn the jury box shall be sealed and delivered to the clerk of the Supreme Court of the District of Columbia for safe-keeping, and the names of the persons drawn shall not be placed again in the box for one year, unless said jurors shall be excused or for other reasons shall fail to serve.

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 560), repealing 31 Stat. L., p. 1189.

SEC. 207. At the time of each drawing of jurors by said commission there shall be in the jury box the names of not less than six hundred persons possessing the qualifications hereinafter prescribed, which names shall have been placed therein by said jury commission. Said jury commission shall keep an accurate record, in alphabetical form, of all names remaining in the jury box from time to time,

which record shall be kept sealed and deposited for safe-keeping in the office of the clerk of the Supreme Court of the District of Columbia when the commission is not in session, and no person shall have access to said record except said commission.

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 560), repealing 31 Stat. L., p. 1189.

SEC. 208. If any persons drawn as grand or petit jurors can not be found, or shall prove to be incompetent, or shall be excused from service by the court, the jury commission, under the direction of the court, shall draw from the box the name of other persons to take their places, and if, after the organization of the jury, any vacancies occur therein, they shall be filled in like manner.

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 560), repealing 31 Stat. L., p. 1189.

As to construction of prior law, see *Milano v. U. S.*, 40 App. D. C. 379 (1913); 41 W. L. R. 357.

SEC. 209. SPECIAL VENIRE.—Whenever in any criminal case in the Supreme Court of the District of Columbia it shall become impossible, on account of challenges or excuses, to impanel a trial jury from among the available petit jurors already in attendance on said supreme court and distributed or assigned among the several special terms thereof, the justice presiding at such criminal trial shall order the marshal to summon as many talesmen as may be necessary to complete said jury.

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 560), repealing 31 Stat. L., p. 1189.
Milano v. U. S., supra.

SEC. 210. It shall be the duty of the marshal, at least five days before the meeting of the court for which a jury is required, to notify each person drawn by serving on him a notice in writing of his selection as a juror of the court he is to attend and of the day and hour when he is to appear. Such notice shall be given to each juror in person or be left at his usual place of residence.

SEC. 211. A copy of the notice, with his certificate stating when and in what manner the original was served, shall be returned by the marshal to the court before the commencement of the term for which the jurors were drawn.

SEC. 212. DEFAULTS.—If any person selected as a juror and duly notified to attend shall, without sufficient cause, neglect to attend agreeably to notice he shall be fined by the court in a sum not exceeding twenty dollars for every day that he shall be absent during the sitting of the court.

SEC. 213. FRAUDS.—If any person shall fraudulently tamper with any box used or intended by the jury commission for the names of prospective jurors, or of prospective condemnation jurors or commissioners, or shall fraudulently tamper with the contents of any such box, or with any jury list, or be guilty of any fraud or collusion with respect to the drawing of jurors or condemnation jurors or commissioners, or if any jury commissioner shall put in or leave out of any such box the name of any person at the request of such person, or at the request of any other person, or if any jury commissioner shall willfully draw from any such box a greater number of names than is required by the court, any such person or jury commissioner so offending shall for each offense be punished by a fine of

not more than \$500 or imprisonment in the District Jail or work-house for not more than one year, or both.

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 560), repealing 31 Stat. L., p. 1189.

§ SEC. 214. If the clerk of the court shall willfully draw from the box a greater number of names than is required by the court, in accordance with the law, or shall put any name into the box after the same has been delivered to him, or shall be guilty of any fraud or collusion in regard to the drawing of jurors, he shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars or imprisonment in the District jail not less than sixty days, or both, for each offense.]

Repealed by act of April 19, 1920 (41 Stat. L., pt. 1, p. 560), and consolidated with section 213 as amended.

SEC. 215. QUALIFICATIONS.—No person shall be competent to act as a juror unless he be a citizen of the United States, a resident of the District of Columbia, over twenty-one and under sixty-five years of age, able to read and write and to understand the English language, and a good and lawful man, who has never been convicted of a felony or a misdemeanor involving moral turpitude.

Qualifications here prescribed do not furnish only test of juror's competency. Common law provision is still in force making ineligible in a criminal case a governmental employee. *Crawford v. U. S.*, 212 U. S. 183 (1909), reversing 30 App. D. C. 1.

See exhaustive opinion by Hoehling, J., in *U. S. v. Griffith*, Criminal No. 37630, Supreme Court, District of Columbia.

SEC. 216. EXCUSES.—A person may be excused by the court from serving on a jury when for any reason his interests or those of the public may be materially injured by his attendance, or when he is a party in any action or proceeding to be tried or determined by the intervention of a jury at the term for which he may be summoned, or where his own health or the death or sickness of a member of his family requires his absence.

SEC. 217. All executive and judicial officers, salaried officers of the Government of the United States and of the District of Columbia and those connected with the police or fire departments, counselors and attorneys at law in actual practice, ministers of the gospel and clergymen of every denomination, practicing physicians and surgeons, keepers of hospitals, asylums, almshouses, or other charitable institutions created by or under the laws relating to the District, captains and masters and other persons employed on vessels navigating the waters of the District shall be exempt from jury duty, and their names shall not be placed on the jury lists.

See sections 205, 215.

See authorities cited under section 215 supra.

Clark v. U. S., 19 App. D. C. 295 (1902); W. L. R. 70.

SEC. 218. The Supreme Court of the District of Columbia in general term shall have full power and authority from time to time to make such rules as it may deem proper respecting the examination, qualification, and admission of persons to membership in its bar and their censure, suspension, and expulsion; and every person so admitted, before he shall be at liberty to practice therein, shall take and subscribe the following oath: "I, ———, do solemnly swear (or affirm) that I will demean myself as a member of the bar of this court uprightly and according to law; and that I will support the Constitution of the United States."

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 561), repealing 31 Stat. L., p. 1189.

SEC. 219. That said supreme court, in general term, shall have full power and authority to censure, suspend from practice, or expel any member of its bar for any crime, misdemeanor, fraud, deceit, malpractice, professional misconduct, or any conduct prejudicial to the administration of justice. Any fraudulent act or misrepresentation by an applicant in connection with his application or admission shall be sufficient cause for the revocation by said court of such admission.

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 561), repealing 31 Stat. L., p. 1189.

Summary proceeding provided by this section is "at least as broad as the rule of the common law." *Diggs v. Thurston*, 39 App. D. C. 267 (1912); 40 W. L. R. 774. Quære: Whether provision is broader than the common-law rule. *Ib.* Court may order attorney to pay to client money collected for the latter, and retained or paid out without lawful authority, and this authority is not affected by the common-law action available to the client. *Ib.*

SEC. 219a. Whenever any member of the bar of said court shall be convicted of any offense involving moral turpitude, and a duly certified copy of the final judgment of such conviction shall be presented to said court, the name of the member so convicted may thereupon, by order of said court, be stricken from the roll of the members of said bar, and he shall thereafter cease to be a member thereof. In the event of appeal from any such judgment of conviction as aforesaid, and pending the final determination of such appeal, the said court may order the suspension from practice of such convicted member of the bar; and upon a reversal of such conviction, or the granting of a pardon, said court shall have power to vacate or modify such order of disbarment or suspension.

Interpolated by act of April 19, 1920 (41 Stat. L., pt. 1, p. 561).

SEC. 220. Before any such member of the bar is censured, suspended, or expelled as provided by section 219, written charges, under oath, against him must be presented to said court, stating distinctly the grounds of complaint. Said court in general term may order said charges to be filed in the office of the clerk of said court and shall fix a time for hearing thereon. Thereupon a certified copy of said charges and order shall be served upon such member personally by the marshal or such other person as the court may designate, or in case it is established to the satisfaction of the court that personal service can not be had, a certified copy of such charges and order shall be served upon him by mail, publication, or otherwise as the court may direct. At any time after the filing of said written charges the court shall have power, pending the trial thereof, to suspend from practice the person charged.

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 561), repealing 31 Stat. L., p. 1189.

SUBCHAPTER FOUR

THE COURT OF APPEALS

SEC. 221. CONSTITUTION.—The court of appeals of said District shall continue as at present organized, and shall consist of one chief justice and two associate justices, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold office during good behavior.

Act of February 9, 1893 (27 Stat. L. 434).

Appellate court has no inherent jurisdiction to issue writ of prohibition to Supreme Court, but may do so in aid of its appellate jurisdiction. In re Macfarland, 30 App. D. C. 365 (1908) ; 36 W. L. R. 114, dismissed in 215 U. S. 614.

SEC. 222. SALARY.—The said justices shall each receive an annual salary of *seven* thousand dollars, payable quarterly at the Treasury of the United States, except the chief justice, who shall receive *seven* thousand five hundred dollars.

See 32 Stat. L., p. 825; 40 Stat. L., p. 1157, providing same salary for judges of Court of Appeals as for judges of the Circuit Court of Appeals.

SEC. 223. OATH.—Each of said justices, before he enters upon the duties of his office, shall take the oath prescribed by law to be taken by the judges of the courts of the United States.

SEC. 224. CLERK, *crier*, and *messenger*.—There shall be a clerk of said court of appeals, to be appointed by the court, who shall receive as compensation for his services, in the discretion of the court, an annual salary not to exceed the sum of three thousand dollars, payable monthly at the Treasury of the United States, and who shall give bond, such as the court may determine to be satisfactory, for the faithful performance of his duties, and his duties shall be such as the court may from time to time prescribe. The said clerk of the court of appeals shall, with the approval of the court, appoint one assistant or deputy clerk, who shall receive as compensation for his services, in the discretion of the court, an annual salary not to exceed the sum of two thousand dollars, payable monthly at the Treasury of the United States, and who may sign the name of the clerk to any official act required by law or by the practice of the court to be performed by the clerk, and may authenticate said signature by affixing the seal of the court thereto when the impress of the seal is necessary to its authentication. In such case the signature shall be—

— — —, Clerk,
By — — —, Assistant Clerk.

The court shall regulate from time to time the fees to be charged by the said clerk, which shall be accounted for at least once in each quarter and paid into the Treasury of the United States, and said clerk shall receive such allowance for necessary expenditures in the conduct of his office as the court may determine by special or general order in the premises, but not to exceed the sum of five hundred dollars in any one year, payable, as aforesaid, at the Treasury of the United States. *Said court may appoint a crier at a compensation not to exceed seventy-five dollars a month and a messenger at a compensation not to exceed sixty dollars a month, both payable at the Treasury of the United States, who shall perform such duties as may be assigned by that court.*

32 Stat. L., pt. 1, p. 528.

SEC. 225. TERMS AND RULES.—The said court of appeals shall establish by rule of court such terms of the court in each year as to it may seem necessary: *Provided, however*, That there shall be at least three terms in each year; and it shall make such rules and regulations as may be necessary and proper for the transaction of its business and the taking of appeals to said court. And said court of appeals shall have the power to prescribe what part or parts of the proceedings in

the court below shall constitute the record on appeal, except as herein otherwise provided, and the forms of bills of exceptions, and to require that the original papers be sent to it instead of copies thereof, and generally to regulate all matters relating to appeals, whether in the court below or in said court of appeals. If any member of the court shall be absent on account of illness or other cause during the session thereof, or shall be disqualified from hearing and determining any particular cause by having been of counsel therein, or by having as justice of the supreme court of the District of Columbia previously passed upon the merits thereof, or if for any reason whatever it shall be impracticable to obtain a full court of three justices, the member or members of the court who shall be present shall designate a justice or justices of the supreme court of the District of Columbia to temporarily fill the vacancy or vacancies so created, and the justice or justices so designated shall sit in said court of appeals and perform the duties of a member thereof while such vacancy or vacancies shall exist: *Provided*, That no justice of the supreme court of the District of Columbia shall, while on the bench of said court of appeals, sit in review of any judgment, decree, or order which he shall have himself entered or made: *Provided also*, That if the parties to any cause shall so stipulate in writing, by their attorneys and solicitors, such cause may be heard and determined by two justices of the court without calling in any of the justices of the supreme court of the District of Columbia: *And provided also*, That all motions to dismiss appeals and other motions may be heard by two justices in the event of the absence or disqualification of any one of the justices as aforesaid: *And provided further*, That if in any cause heard before two justices as aforesaid the court shall be divided in its opinion, then the judgment or decree of the lower court shall stand affirmed.

See act of Sept. 14, 1922 (42 Stat. L., pt. 1, p. 839, *infra*; p. 525, relative to assignment of justice from Court of Customs Appeals).

Rules of court "'have the force of law, and are binding upon the court and upon the suitors, and those who represent suitors.' They can not be dispensed with by the court to meet the hardship of a particular case." *Murphy v. Gould*, 39 App. D. C. 363 (1912); 40 W. L. R. 824, certiorari denied 226 U. S., 613, citing *D. C. v. Roth*, 18 App. D. C. 547; *Talty v. D. C.*, 20 App. D. C. 489; U. S. ex rel. *Mulvihill v. Clabaugh*, 21 App. D. C. 440; *D. C. v. Humphries*, 11 App. D. C. 68.

United States ex rel. Queen v. Alvey, 182 U. S. 456 (1901).

SEC. 226. JURISDICTION.—Any party aggrieved by any final order, judgment, or decree of the supreme court of the District of Columbia, or of any justice thereof, including any final order or judgment in any case heard on appeal from a justice of the peace, may appeal therefrom to the said court of appeals; and upon such appeal the court of appeals shall review such order, judgment, or decree, and affirm, reverse, or modify the same as shall be just, except as provided in the following sections. Appeals shall also be allowed to said court of appeals from all interlocutory orders of the supreme court of the District of Columbia, or by any justice thereof, whereby the possession of property is changed or affected, such as orders for the appointment of receivers, granting injunctions, dissolving writs of attachment, and the like; and also from any other interlocutory

order, in the discretion of the said court of appeals, whenever it is made to appear to said court upon petition that it will be in the interest of justice to allow such appeal.

See section 227, Municipal Court Acts, pp. 519, 521, and Juvenile Court Act, p. 509, *infra*.

See 40 Stat. L., pt. 1, p. 1181, authorizing appellate courts to disregard certain technical errors.

Only such interlocutory orders granting injunctions "as affirmatively changed or affected possession of property" are appealable as matter of right. *McCaul Co. v. Harr*, 51 App. D. C. 111 (1921); 49 W. L. R. 757, citing *Lighting Co. v. Metropolitan Club*, 6 App. D. C. 536; *Macfarland v. Railroad Co.*, 18 App. D. C. 456; and *Hayes v. Conger*, 36 App. D. C. 202.

After appointment of receiver an order directing that certain property covered by original order shall be delivered to him is supplemental only and not appealable. *Mearns v. Sullivan*, 49 App. D. C. 179 (1920); 48 W. L. R. 84. Order adjudging one in contempt for failure to deliver such property is not a final order. *Ib.*

Appeal will not lie from order of probate court framing issues on caveat to will. *Hutchins v. Hutchins*, 40 App. D. C. 180 (1913), distinguishing *Dugan v. Northcutt*, 7 App. D. C. 351; *Trust Co. v. Sweeny*, 3 App. D. C. 401; and *Trust Co. v. Heiberger*, 19 App. D. C. 506.

Appeal will lie from order awarding custody of child on habeas corpus. *Nuckols v. Nuckols*, 38 App. 441 (1912); 40 W. L. R. 201, citing *Goldsmith v. Valentine*, 35 App. D. C. 299.

No appellate jurisdiction over the supreme court of the District sitting as a court of bankruptcy. *Sullivan v. Goldman*, 38 App. D. C. 319. (1912); 40 W. L. R. 200, certiorari denied 225 U. S. 701.

Order of probate court directing that a petition stand as a caveat is not appealable. *Craighead v. Alexander*, 38 App. D. C. 229 (1912); 40 W. L. R. 114.

Appeal lies from order finding defendant guilty of criminal contempt. *Pierce v. U. S.*, 37 App. D. C. 582 (1911); 39 W. L. R. 802, certiorari denied, 223 U. S. 732. As to right of appeal in contempt cases see also *Gompers v. Buck Stove & Range Co.*, 33 App. D. C. 516 (1909) 37 W. L. R. 706; *Re Gompers*, 40 App. D. C. 293 (1913); *Gompers v. U. S.*, 233 U. S. 604 (1914).

"A decree may be final in the sense that it may be appealed from, though not final in the strict technical sense of the term. If it dispose of all questions within the pleadings, and nothing remains but to adjust an account between the parties in the execution of the decree, it is final. But if the reference is for a judicial purpose, as to state an account between the parties, upon which a further decree is to be entered, it is not final." *King v. Harrington*, 35 App. D. C. 111 (1910); 38 W. L. R. 380, citing *Gilbert v. Benefit Assoc.*, 10 App. D. C. 316 (173 U. S. 701); *Metzger v. Kelly*, 34 App. D. C. 548.

"It is a condition precedent to the right of appeal that the appellant must show that he is directly aggrieved by the order appealed from." *Barksdale v. Morgan*, 34 App. D. C. 549 (1910); 38 W. L. R. 250. See also *Dieterich v. Dieterich*, 48 App. D. C. 356; 47 W. L. R. 88. As to right of an executor to appeal, see *Barksdale v. Morgan*, *supra*.

Special appeal from interlocutory order allowed when it appeared that the trial of the issues framed would result in vexatious delay and costs to no purpose, should it be afterwards determined that trial court was without jurisdiction. *Healey v. Maroney*, 34 App. D. C. 99 (1909); 37 W. L. R. 830.

Court has discretionary power to allow an appeal from any interlocutory order, and after appeal has been allowed, that discretion can not be questioned. *Parish v. Hedges*, 34 App. D. C. 21 (1909); 37 W. L. R. 752.

Richardson v. Reeves, 34 App. D. C. 9 (1909); 37 W. L. R. 755.

As to right of appellate court to issue writ of prohibition to supreme court, see *In re Macfarland*, 30 App. D. C. 365 (1908); 36 W. L. R. 114, dismissed 215 U. S. 614. As to use of mandamus to compel entry of judgment according to mandate of court of appeals, see *Ex parte Mansfield*, 11 App. D. C. 558 (1897); 25 W. L. R. 783. See also *Hartman v. Masters*, 46 App. D. C. 271 (1917) 45 W. L. R. 246.

Court has jurisdiction to hear appeals in a proceeding to take land by condemnation and determine the compensation to be made for it. *Winslow v. B. & O. R. Co.*, 28 App. D. C. 126 (1906); 34 W. L. R. 510, affirmed in 208 U. S. 59. See also *Seufferle v. Macfarland*, 28 App. D. C. 94 (1906); 34 W. L. R. 526.

As to right of court of appeals to compel payment of attorney's fees and court costs pending appeal, see *Bernsdorff v. Bernsdorff*, 26 App. D. C. 228 (1905) ; 33 W. L. R. 775, and cases cited.

Order dismissing defendant in criminal case from the indictment without day is final and therefore appealable. *U. S. v. Cadaar*, 24 App. D. C. 143 (1904) ; 32 W. L. R. 486, reversed (on other grounds) 197 U. S. 475.

Order of justice of peace quashing attachment is not appealable, while the action remains undisposed of. *U. S. ex rel Robertson v. Barnard*, 24 App. D. C. 8 (1904) ; 32 W. L. R. 458.

Neither an order overruling motion to vacate order of publication nor a decree pro confesso is appealable. *Chappell v. O'Brien*, 22 App. D. C. 190 (1903) ; 31 W. L. R. 459.

"There is no power in this court, by certiorari or otherwise, to correct the imperfections or misstatements that are alleged to exist in the bill of exceptions taken and certified to this court." *Kelly v. Moore*, 22 App. D. C. 1 (1903) ; 31 W. L. R. 290.

"An order for the payment of alimony pendente lite, although merely an incident in all these proceedings, is in effect a final order" and therefore appealable as of right. *Lesh v. Lesh*, 21 App. D. C. 475 (1903) ; 31 W. L. R. 288, citing *Alexander v. Alexander*, 13 App. D. C. 334. See also *Lynham v. Hufty*, 44 App. D. C. 589 (1916) ; 44 W. L. R. 229.

Order dismissing petition for habeas corpus is a final order, although growing out of a preceding cause but having no necessary dependence thereon or connection therewith. *Costello v. Palmer*, 20 App. D. C. 210 (1902) ; 30 W. L. R. 402.

Final order of dismissal as to one count of a declaration is not appealable, where the disposition of the subject matter depends upon the issues made by and under the remaining counts. *Commercial Bank v. Brewing Co.*, 16 App. D. C. 186 ; 28 W. L. R. 320 (1900).

Otterback v. Patch, 5 App. D. C. 69 (1894) ; 22 W. L. R. 833.

As to right of appeal in forma pauperis in civil cases, see *Ex parte Harlow*, 3 App. D. C. 203 (1894) ; see, however, 42 Stat. L. p. 666. See also *McLaren v. McLaren*, 44 App. D. C. 555 (1916), 44 W. L. R. 201, allowing filing of type-written brief on appeal in forma pauperis.

In re *Walter*, 1 App. D. C. 189 (1893) ; 23 W. L. R. 638.

SEC. 227. APPEALS FROM POLICE COURT.—If, upon the trial of any cause in the police court, an exception be taken by or on behalf of the United States, the District of Columbia, or any defendant to any ruling or instruction of the court upon matter of law, the same shall be reduced to writing and stated in a bill of exceptions, with so much of the evidence as may be material to the question or questions raised, which said bill of exceptions shall be settled and signed by the judge within such time as may be prescribed by rules and regulations which shall be made by the court of appeals of the District of Columbia for the transaction of business to be brought before it under this section, and for the time and method of the entry of appeals and for giving notice of writs of error thereto from the police court of the District of Columbia ; and if, upon presentation to any justice of the court of appeals of the District of Columbia of a petition which, in the case of a defendant, shall be verified, setting forth the matter or matters so excepted to, such justice shall be of opinion that the same ought to be reviewed, he may allow a writ of error in the cause, which shall issue out of the said court of appeals, addressed to the judge of the police court, who shall forthwith send up the information filed in the cause and a transcript of the record therein, certified under the seal of said court, to said court of appeals for review and such action as the law may require, which record shall be filed in said court of appeals within such time as may be prescribed by the court of appeals, as hereinbefore provided. Any party desiring the benefit of the provisions of this section shall give notice in open court of his or its

intention to apply for a writ of error upon such exceptions and thereupon proceedings therein shall be stayed for ten days: *Provided*, That the defendant seeking an appeal shall then and there enter into recognizance, with sufficient surety to be approved by the judge of the police court, conditioned that in the event of a denial of his application for a writ of error he will, within five days next after the expiration of said ten days appear in said police court and abide by and perform its judgment, and that in the event of the granting of such writ of error he will appear in said court of appeals of the District of Columbia and prosecute the writ of error and abide by and perform its judgment in the premises. Upon failure of any defendant to enter into the recognizance provided for in this section the sentence of the police court shall stand and be executed; otherwise execution shall be stayed pending proceedings upon his application for a writ of error and until final disposition thereof by the said court of appeals.

Act of March 2, 1897 (29 Stat. L., p. 607).

"Writs of error to the police court are not granted to review formal defects in pleading merely." *Jefferson v. D. C.*, 40 App. D. C. 381 (1913), 41 W. L. R. 355.

Writ of error will not lie to review order denying motion to quash an information. *Traction Co. v. U. S.*, 34 App. D. C. 591 (1910); 38 W. L. R. 312.

Lenovitz v. U. S. 34 App. D. C. 241 (1909).

"The proper time to give notice of intention to apply to this court for a writ of error in these cases tried in the police court is when the first exception is taken. * * * But it will not be necessary to repeat the notice with every exception that is taken. *Tubins v. D. C.*, 21 App. D. C. 267 (1903); 31 W. L. R. 460.

Appellate court ought not to entertain affidavits contradicting or explaining the recitals in the record certified from the police court. "The certified record imports verity." *Talty v. D. C.*, 20 App. D. C. 489 (1902); 30 W. L. R. 774.

As to right of appellate court to issue certiorari to police court, see *Sullivan v. D. C.*, 19 App. D. C. 210 (1902); 30 W. L. R. 55.

Ex parte Dries, 3 App. D. C. 165 (1894); 22 W. L. R. 301.

SEC. 228. APPEALS FROM COMMISSIONER OF PATENTS.—The determination of appeals from the decisions of the Commissioner of Patents shall remain vested in said court of appeals, as provided by the Act approved February ninth, eighteen hundred and ninety-three, chapter seventy-four, entitled "An Act to establish a court of appeals for the District of Columbia, and for other purposes," and any party aggrieved by a decision of the Commissioner of Patents in any interference case may appeal therefrom to said court of appeals.

See *Torbert's Digest of Patent and Trade Mark Cases*.

SEC. 229. OPINIONS.—The opinion of the said court of appeals in every case shall be rendered in writing, and shall be filed in such case as a part of the record thereof, and the said court of appeals is authorized to appoint a reporter, who shall serve during the pleasure of the court and with a salary of one thousand dollars per annum, and whose duty shall be to report, edit, and publish, in form to be prescribed by the court, its opinions.

And the said reporter shall furnish and deliver one copy of each volume of the reports of said opinions which shall have been published at the date of the passage of this code to each of the justices of the said court of appeals, the supreme court, and the judges of

the police court of said District, immediately after the passage hereof, and shall thereafter furnish and deliver one copy of each volume of the reports of said opinions that shall thereafter be published immediately after the issue thereof to each of said justices and judges, and the copies so received by each of them shall, in case of his death, resignation, or removal from office, be delivered to his successor.

32 Stat. L. p. 609.

SEC. 230. WRITS.—The said court of appeals shall have power to issue all necessary and proper remedial prerogative writs in aid of its appellate jurisdiction.

See cases cited under sections 226, 227.

"The writ (of prohibition) can not issue unless it is clearly made to appear that the inferior court is about to exceed its jurisdiction." *U. S. ex rel. Holmead v. Barnard*, 29 App. D. C. 431 (1907); 35 W. L. R. 370. Nor can such writ serve the purpose of a writ of error or of certiorari. *Ib.*

Use of mandamus to compel approval of appeal bond. *Mulvihill v. Clabaugh*, 21 App. 440 (1903); 31 W. L. R. 210.

Slater v. Willige, 16 App. D. C. 364 (1900); 28 W. L. R. 454.

U. S. ex rel Beall v. Cox, 14 App. D. C. 368 (1899); 27 W. L. R. 231.

SEC. 231. MARSHAL TO EXECUTE ORDERS.—The marshal of the United States for the District of Columbia shall execute the orders and processes of the court of appeals in the same manner as he executes those of the supreme court of the District.

SEC. 232. HALF OF SALARIES PAID BY DISTRICT OF COLUMBIA.—One-half of the amounts paid on account of salaries of the justices of the court of appeals shall be paid from the revenues of the District of Columbia.

SUBCHAPTER FIVE

THE SUPREME COURT OF THE UNITED STATES

SEC. 233. Any final judgment or decree of the court of appeals may be reexamined and affirmed, reversed, or modified by the Supreme Court of the United States, upon writ of error or appeal, in all cases in which the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars, in the same manner and under the same regulations as existed in cases of writs of error on judgments or appeals from decrees rendered in the supreme court of the District of Columbia on February ninth, eighteen hundred and ninety-three, and also in cases, without regard to the sum or value of the matter in dispute, wherein is involved the validity of any patent or copyright, or in which is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States.

See Judicial Code, sections 250-252 (act of March 3, 1911, 36 Stat. L. 1159).

Coal Co. v. U. S., 257 U. S. 47.

Heald v. D. C., 254 U. S. 20.

Hartranft v. Mulowny, 247 U. S. 295.

Fuller Co. v. Elevator Co., 245 U. S. 489.

For other annotations see *Federal Statutes Annotated* (second edition), vol. 5, pp. 913 et seq.

SEC. 234. In any case heretofore made final in the court of appeals it shall be competent for the Supreme Court of the United States to require, by certiorari or otherwise, any such case to be certified to said Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to said Supreme Court.

See section 233.

CHAPTER TWO

ABATEMENT

SEC. 235. RIGHT OF ACTION TO SURVIVE.—On the death of any person in whose favor or against whom a right of action may have accrued for any cause except an injury to the person or to the reputation, said right of action shall survive in favor of or against the legal representatives of the deceased; but no right of action for an injury to the person, except as provided in chapter forty-five of this code, or to the reputation, shall so survive.

See section 783.

Disbarment proceedings against attorney do not survive, although appeal was pending at his death. *Metzger v. O'Donoghue*, 53 App. D. C. 107 (1923); 51 W. L. R. 364.

This section is not applicable to partnerships, since surviving partner is vested with legal title to the assets of the partnership; and after reducing them to possession will be accountable to representative of deceased partner. *Dingman v. Henry*, 51 App. D. C. 339 (1922); 50 W. L. R. 327.

SEC. 236. DEATH, EFFECT OF.—No action at common law shall abate by the death of either or any of the parties thereto if the right of action would survive as aforesaid; but upon the death of any defendant the action shall continue pending, and the heir, devisee, executor, administrator, or other person interested in the place of the deceased defendant, as the case may require, may appear to such action. And in case the proper person to defend such action shall not appear to the same during the term of the court in which such death may be suggested, the plaintiff may cause a summons to be issued, directed to the proper person to defend such action, to be served on such person, if found in the District of Columbia and legally suable therein, requiring him to appear thereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the service thereof, and show cause why such action should not be prosecuted to judgment; and if it shall appear to the court that such summons has been duly served, and the person so summoned shall not appear as thereby required, then the court may cause the appearance of such person to be entered, and there shall be the same proceedings in said action as if said person had voluntarily appeared; and all the proceedings had before the death of the defendant shall be considered as proceedings in the action, and such further proceedings shall be had to bring the cause fairly to trial as the court may deem proper. If the proper representative of a deceased defendant be not made a party to the action within one year from the death of said defendant, the action shall abate as to such defendant: *Provided, however*, That where the representative of the deceased is an executor or administrator the plaintiff shall have six months after the issuance of letters testamentary or of administration within which to make such representative a party: *And provided further*, That in case the summons

above provided for shall be returned "Not to be found," publication may be substituted therefor in all cases in which proceeding by publication is authorized by this code.

See section 105.

Act of Maryland of 1785, ch. 80, sec. 1; Comp. Stat. D. C. p. 457, sec. 81.

The year within which proper representative must be made a party is measured from the death of the defendants, and not from the time that the plaintiff learned thereof. *Whelan v. Welch*, 50 App. D. C. (1921) 173; 49 W. L. R. 99.

Upon the death of a married woman (plaintiff in an ejectment action), her husband, who thereby becomes entitled to the estate by curtesy, can not be substituted in her place, and "a new action and summons on the part of the new plaintiff was essential." *Welch v. Lynch*, 30 App. D. C. 122 (1907); 35 W. L. R. 398.

It is not competent for the plaintiff in replevin to discontinue or dismiss his suit or voluntarily withdraw from it, without the consent of the defendant, after the property has been delivered to him under the writ, unless he returns the property taken or makes good his loss. Hence plaintiff's death does not bar action, and the defendant has the right to compel the executor or administrator to become a party to the suit. *Corbett v. Pond*, 10 App. D. C. 17 (1897); 25 W. L. R. 33. As to application of time limit in making proper representative party, where there are two or more parties plaintiff, see *ib.* distinguishing *Danenhower v. Ball*, 8 App. D. C. 137; 24 W. L. R. 221.

SEC. 237. SUMMONS TO EXECUTOR, AND SO FORTH.—If *any* plaintiff in any such action shall die before judgment is given, the heir, devisee, executor, administrator, or other proper person to prosecute such action may appear and prosecute the same; and if such person does not appear to prosecute such action during the term of said court in which the death may be suggested, the defendant may cause a summons to be issued, directed to the proper person to prosecute such action, requiring him to appear and prosecute the same on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after service of the same; and if it shall appear to the court that such summons has been duly served, and the party summoned shall fail to appear in obedience thereto to prosecute the action, or if said party be not found in the District of Columbia and shall not appear to prosecute such action by the fourth day of the second term of the court after the term at which the death is suggested, the action shall abate *or the cause may proceed to judgment notwithstanding such failure to appear, as the defendant may elect*; but if the proper person to prosecute such action shall appear therein, either voluntarily or after being summoned as aforesaid, before said suit shall so abate, all proceedings in the action had before the death of the plaintiff shall be considered as proceedings in the cause, and such other proceedings shall be had to bring the cause fairly to trial as the court may deem proper.

32 Stat. L. pt. 1, p. 528.

Welch v. Lynch, 30 App. D. C. 122 (see sec. 236 supra).

SEC. 238. DEATH OF NEW PARTY.—In all cases where a new party has been made to any action under the provisions aforesaid, and the new party so made shall die before judgment, or if an executor or administrator shall be removed from his office, the proper person to prosecute or defend such action in the place of the party so dying or removed may be made a party thereto by the same proceeding herein authorized on the death of the original plaintiff or defendant.

SEC. 239. PLEADINGS.—Any new party to any action may use and rely upon any pleadings put in by his predecessor in such action, or

shall have the same right to amend the pleadings or proceedings in such action as if he had been an original party thereto.

SEC. 240. COSTS.—In all cases where a new party is made to an action the costs which accrued before such new party was made shall be taxed as part of the costs in such action, and the judgment rendered shall be the same as if the action had been originally commenced between the persons who are parties to such action: *Provided*, That no defendant who is made a new party to such action shall be burdened with debts, damages, or costs beyond the amount of property or assets descended or come to his hands from the deceased.

SEC. 241. JOINT PARTIES.—In case of the death of one of several joint defendants to an action, where the right of action will survive as aforesaid, the same proceedings shall be had to make the proper representative of the deceased a party to the action as in the case of a sole defendant.

SEC. 242. APPEALS FROM JUSTICES OF THE PEACE.—An appeal from a judgment rendered by any justice of the peace shall be deemed an action within the meaning of the foregoing provisions.

SEC. 243. EQUITY SUITS.—No suit in equity shall abate by the death of any of the parties in cases where the rights involved in the suit survive.

SEC. 244. DEATH OF PARTY TO EQUITY SUIT.—If any of the parties to a suit in equity, whether complainant or defendant, shall die after the filing of the bill or petition, it shall not be necessary to file a bill of revivor; but any of the surviving parties may file a suggestion of such death, setting forth when the death occurred, and who is the legal representative of such deceased party, and how he is the representative, whether by devise, descent, or otherwise.

SEC. 245. SUBPŒNA TO REPRESENTATIVES.—Upon such a suggestion a subpoena shall issue for the legal representative of the deceased party, commanding him to appear and be made a party to such suit, if such representative reside within the District of Columbia; and if such representative is a nonresident, then such notice shall be given instead of the subpoena as is herein elsewhere provided for nonresident defendants.

SEC. 246. DEATH AFTER DECREE FOR ACCOUNT, AND SO FORTH.—If any defendant shall die after a decree for an account, sale, or partition, or after such other proceedings shall have been had after appearance as would have warranted the passing of such a decree, or if such deceased defendant shall have answered, confessing the facts stated in the bill, or shall have set up no defense to the relief therein prayed, the court may, in its discretion, order the cause to be proceeded in as if no death had occurred, or may order a bill of revivor or a supplemental bill to be filed, and the proper representative of such deceased defendant to be made a party, as may seem best calculated to advance the purposes of justice: *Provided*, That the heir or other proper representative of such deceased defendant, at any time before final decree, may appear and be made a party on such reasonable terms as the court may direct; and such new party may file an answer to the original bill, subject to such terms as the court may impose, in which he may insist on such defenses, and none other, as might have been made to a bill of revivor or supplemental bill in the nature of a bill of revivor filed against him.

SEC. 247. MARRIAGE OF PARTY.—No suit at law or in equity shall abate by the marriage of any of the parties; but on application of any of the parties the court may, on such terms and notice as it shall deem proper, allow and order any amendment in the pleadings and the making of any new or additional parties that such marriage may render necessary or proper.

SEC. 248. DEATH AFTER FINAL DECREE.—If any of the parties to a suit die after final decree, the court may order execution of such decree as if no death had occurred, or the court may order a subpoena scire facias to be issued, or a bill of revivor to be filed against the proper representatives of such deceased party, or pass such other order or direct such other proceedings as may seem best calculated to advance the purposes of justice: *Provided*, That the heir or other proper representative may appear at any time before execution of said decree and be admitted as a party to the suit, on such terms as the court may prescribe, and such further proceeding may be had as may be appropriate to the merits of the cause.

SEC. 249. FAILURE TO APPEAR.—If any representative of a deceased party shall fail to appear, after being summoned, within the time therein limited, or shall fail to appear after notice by publication, the court may order the appearance of such representative to be entered, to have the same effect as if such representative had appeared in person and been made a party.

SEC. 250. EVASION OF SERVICE OF PROCESS.—In all cases where any representative of a deceased party to a suit shall evade any process issued against him, or shall leave the District before any such process can be served on him, he may be proceeded against as a nonresident defendant.

SEC. 251. BILL OF REVIVOR.—A bill of revivor or supplemental bill in the nature of a bill of revivor may be filed, instead of a suggestion of the death of a party, and notice thereof shall be given to the defendant by subpoena or the service of a copy of such bill, if he be found within the District, as the court may direct; or, if the party be a nonresident or secrete himself or evade the service of the summons, or if his residence be unknown, then notice by publication may be given as against nonresident defendants.

CHAPTER THREE

ABSENCE FOR SEVEN YEARS

SEC. 252. PRESUMPTION OF DEATH.—If any person shall leave his domicile without any known intention of changing the same, and shall not return or be heard from for seven years from the time of his so leaving, he shall be presumed to be dead, in any case wherein his death shall come in question, unless proof be made that he was alive within that time.

“The common-law presumption of death was made statutory, and the statute declares the public policy of the District in that respect.” *National Union v. Sawyer*, 42 App. D. C. 475 (1914); 42 W. L. R. 810. Hence, insurance company, although incorporated elsewhere, can not effectively adopt by-law seeking to overcome presumption of death from long-continued absence. *Ib.*

There is no presumption of death from an absence of less than seven years, unless it appears that during that time the absent person “encountered some specific peril, or within that period came within the range of some impending or immediate danger, which might reasonably be expected to destroy life.” or that he disappeared under circumstances inconsistent with a continuation of life. *Groff v. Groff*, 36 App. D. C. 560 (1911); 39 W. L. R. 181. See also *Angell v. Groff*, 42 App. D. C. 198 (1914); 42 W. L. R. 263 (cited under sec. 137).

Howard v. Evans, 24 App. D. C. 127 (1904); 32 W. L. R. 406, citing *Posey v. Hanson*, 10 App. D. C. 496 (1897); 25 W. L. R. 299; *Hamilton v. Rathbone*, 9 App. D. C. 48 (1896); 24 W. L. R. 390 (holding that there is no presumption as to the time of death), reversed on other grounds, 175 U. S. 414.

SEC. 253. PERSON FOUND LIVING.—If the person so presumed to be dead be found to have been living, any person injured by such presumption shall be restored to the rights of which he shall have been deprived by reason of such presumption.

CHAPTER FOUR

ACCOUNT

SEC. 254. AUDITOR'S REPORT AND EXCEPTIONS.—In actions at common law grounded upon an account, or in which it may be necessary to examine and determine upon accounts between the parties, the court, in its discretion, at any stage of the cause, may order the accounts and dealings between the parties to be audited and stated by the auditor of the court or by a special auditor to be appointed by the court for the purpose; in which case, if a jury shall have been sworn, they shall be discharged. The course of proceedings before the auditor shall be the same as in cases in equity referred to him. When his audit is completed the auditor shall file his report and account in the clerk's office and give notice thereof to the parties or their attorneys, and at the expiration of thirty days after said notice judgment may be entered, on motion of either party, in accordance with said report and account, unless exceptions are filed thereto for errors in law or fact therein. The party excepting thereto shall point out particularly the item or items in such report and account excepted to, and state the grounds of such exception, and annex to his exceptions a certificate of counsel that, in his opinion, the matters of law therein stated are well founded in law, and an affidavit of such party that the exceptions are not filed for delay, and that the allegations of fact in said exceptions are true *to the best of his knowledge and belief*, and a copy of said exceptions shall be served on the opposite party or his attorney.

32 Stat. L., pt. 1, p. 528.

"Failure to except to a finding (of the auditor), as we understand the statute, is equivalent to an admission that it is correct." *Weinstein v. Lansburgh Co.*, 51 App. D. C. 271 (1922); 50 W. L. R. 150. "As we understand chapter 4, the party defeated before the auditor must except to his ultimate finding, and to every other finding which he believes prejudicially affects that finding, and must state with particularity the grounds of each exception. In other words, he must show the relation between the subordinate finding and the ultimate one, and that, if his theory is correct, the ultimate one is wrong in whole or in part." *Ib.* Exceptions can not be to matters *de hors* the report. *Ib.*

The statute "applies only to actions at law wherein a mutual accounting between the parties is involved." *Eichberg v. Shipping Board*, 51 App. D. C. 44 (1921); 49 W. L. R. 418.

Court has inherent power to make references in actions at law to the same extent as in equity. A compulsory reference with power to determine issue is impossible in view of constitutional provisions. But no reason exists why a compulsory reference to simplify and clarify the issues and to make tentative findings can not be made at law, when occasion arises, as freely as in equity. *Eichberg v. Shipping Board*, *supra*. The language of section 254 does not limit the inherent power of the court to make an order of reference.

In the absence of exceptions under a general submission, the auditor's report when admitted on trial before a jury is *prima facie* evidence both of the facts and conclusions of fact therein contained. *Ib.* See also *Eichberg v. Shipping Board*, 52 App. D. C. (1922) 194; 51 W. L. R. 25.

"The exceptions, to be sufficient to avoid judgment on the report, must respond to the original issues made by the pleadings, as further defined and limited by the approved findings of the auditor. If proper exceptions are filed, in so far as they dispute the findings of fact by the auditor, they create issues to be submitted to the jury, and, upon the issues so defined, the trial will proceed in all respects as if no reference or report had been made." *Ib.*

A failure to object to an order of reference is equivalent to a consent thereto. *Ib.*

Consent to a common-law reference, however, which does not amount to a stipulation of reference for a finding of law and fact, does not amount to a waiver of a trial by jury, if by proper exception issues of fact can be framed for submission to a jury. *Eichberg v. Shipping Board*, 52 App. D. C. 194 (1922); 51 W. L. R. 25.

The selection of a special auditor is within the discretion of the trial court. *Lincoln v. Cement Co.*, 49 App. D. C. 33 (1919); 47 W. L. R. 326.

The allowance of amendments to exceptions is also within the court's discretion. *Ib.*

If there are no disputed facts, it is not error to refuse to submit an exception to the jury. *Ib.*

Chapter 4 of the code does not "deprive a party, in a proper case, of a trial by the common law triers of fact, but provides a simple and workable method by which he may secure it." *Ib.*, citing, with approval, *Simmons v. Morrison*, 13 App. D. C. 161 (1898); 26 W. L. R. 434.

"The findings of a master or an auditor, concurred in by the court below, are to be taken as presumptively correct, and will be permitted to stand, unless some obvious error has intervened in the application of the law or the principles of the decree under which he acts, or some important mistake has been made in the evidence, and which has been clearly pointed out and made manifest." *France v. Coleman*, 29 App. D. C. 286 (1907); 35 W. L. R. 193, dismissed in 207 U. S. 601, citing with approval *Richardson v. Van Auken*, 5 App. D. C. 209; 23 W. L. R. 102; *Grafton v. Paine*, 7 App. D. C. 257; 23 W. L. R. 806 dismissed in 168 U. S. 704; *Smith v. Trust Co.*, 12 App. D. C. 192; 26 W. L. R. 199; *Hutchins v. Munn*, 28 App. D. C. 271; 34 W. L. R. 704, affirmed in 209 U. S. 246. See also *Consaul v. Cummings*, 24 App. D. C. 36 (1904); 32 W. L. R. 470.

"It is the right of parties who file exceptions to withdraw them. They are not bound to let them stand because other parties may find it to their advantage to have them retained." Other parties could have taken their own exceptions. *Gilbert v. Endowment Assoc.*, 21 App. D. C. 344 (1903); 31 W. L. R. 190.

See also *American Ice Co. v. Trust Co.*, 17 App. D. C. 422; 29 W. L. R. 55 (1901); *U. S. v. Groome*, 13 App. D. C. 460 (1898); 26 W. L. R. 802.

SEC. 255. TRIAL OF EXCEPTIONS.—When such exceptions are filed, the court shall enter the cause on the trial calendar of the term in which they are filed in its proper place, and the issues made by said exceptions shall be tried and determined in the same manner as other issues of law or fact made by the pleadings in an action at common law, and any part of such report and account not so excepted to shall be adjudged to be conclusive between the parties on such trial.

See cases cited under section 254.

SEC. 256. DIRECTIONS TO JURY.—If, in the opinion of the court, such issues are so numerous as to create confusion the court may, in its discretion, direct evidence to be received and considered by the jury as to a part of said issues, and direct the jury to retire and conclude as to the same before hearing the evidence as to the other issues, and this to repeat as often as may be necessary, the final conclusion of the jury as to all the issues to be announced as their verdict; or may submit the different issues to the same jury at different times for their separate verdicts thereon, or submit such issues to

different juries; or may pursue such other course as the rules of the court may prescribe to facilitate the determination of such issues.

See cases cited under section 254.

SEC. 257. FRIVOLOUS EXCEPTIONS.—If only general, immaterial, or frivolous exceptions are made or they are filed without the certificate of counsel and affidavit of exceptant, required as aforesaid, they may be overruled by the court or a justice at chambers, on notice and motion, and judgment entered as if no exceptions had been filed.

See cases cited under section 254.

SEC. 258. JUDGMENT.—Upon the conclusion of such trial or trials the court shall enter judgment upon the auditor's report as affirmed or corrected by the findings of the jury.

As to modification by court of appeals of decree approving auditor's report, because defective in form, see *Eclipse Bicycle Co. v. Farrow*, 23 App. D. C. 411 (1904); 32 W. L. R. 265; reversed, 199 U. S. 581.

CHAPTER FIVE

ADMINISTRATION

SUBCHAPTER ONE

EXECUTORS, ADMINISTRATORS, AND COLLECTORS

[SEC. 259. ESTATE TO BE ADMINISTERED.—On the death of any person domiciled in the District of Columbia leaving real or personal estate, or both, therein, all his personal estate and so much of his real estate as shall be necessary in addition thereto for the payment of his debts shall be the subject of administration under authority and direction of the probate court.]

Repealed, 32 Stat. L., pt. 1, p. 528.

SEC. 260. LIEN OF CREDITORS.—On the death of any person not domiciled in the District of Columbia at the time of his death so much of his real *and personal* estate in the District of Columbia as may be necessary for the payment and discharge of just claims against him of creditors and persons domiciled in the District of Columbia shall also be the subject of administration under authority and direction of the probate court, irrespective of the personal estate of such decedent *at his place of domicile or elsewhere: Provided,* The prosecution of such claims is begun in said court within one year after the death of such decedent.

32 Stat. L., pt. 1, p. 528.

SEC. 261. COMPETENCY OF EXECUTORS, AND SO FORTH.—No letters testamentary or of administration shall be granted to a person convicted of an infamous offense, or to an idiot or lunatic, or person non compos mentis, or one under eighteen years of age, or to an alien; and all questions as to the disqualification on any of said grounds of any person claiming to be entitled to letters testamentary or of administration shall be determined by the probate court, after such notice to the said persons as the court may direct.

See sections 116 et seq., 270, 294.

Act of Maryland of 1798, ch. 101, subch. 4, sec. 1; Comp. Stat. D. C., p. 11, sec. 31.

SEC. 262. LETTERS TESTAMENTARY.—When any will or codicil respecting either real or personal property shall have been authenticated and admitted to probate, letters testamentary thereon shall be issued to the executor named therein, if he is legally competent and will accept the trust: *Provided,* That he shall first execute a bond to the United States, with security to be approved by the court, in such penalty as the court may require, with a condition that he will administer according to law and to the will of the testator all his goods, chattels, rights, and credits, and the proceeds of all his real estate that may be sold for the payment of his debts or legacies which shall at any time come to the possession of the executor or to

the possession of any other person for him, and in all other respects faithfully perform the trusts reposed in him: *And provided further*, That said executor shall take and subscribe and file an oath that he will well and truly administer the estate of the deceased according to law and will give a just account of his administration when thereto lawfully called: *Provided*, That the above conditions as to bond and oath shall not apply to corporations authorized to act as executors.

See sections 263–265, 294–297, 301, 319, 344, 745.

Act of Maryland of 1798, ch. 101, subch. 3, sec. 1; Comp. Stat. D. C., p. 5, sec. 9; *Marfield v. McCurdy*, 26 App. D. C. 342 (1905); 33 W. L. R. 450 (see sec. 369, *infra*).

SEC. 263. BOND, WHEN NOT REQUIRED.—Whenever a testator shall, by last will and testament, request that his executor be not required to give bond for the performance of his duty, in such case the bond required of the executor shall be in such penalty as the court may consider sufficient to secure the payment of the debts due by the testator: *Provided, however*, That the penalty of such bond shall not exceed double the value of the personal estate; and when less than this sum it may be increased, or an additional bond may be required, whenever it shall be made to appear to the court that the bond as given is insufficient to secure the payment of the debts of the testator: *And provided further*, That whenever any *party interested* shall make it appear to the court that any executor who has given such bond only as is herein provided for is wasting the assets of the estate, or that the assets are in danger of being lost, wasted, or misappropriated, then the said executor may be removed or required to give additional bond with security in a penalty sufficient to secure the interests of all the creditors, distributees, and legatees entitled to take said estate, and on his failure to give bond as required his letters may be revoked; and upon such revocation the same results shall ensue as hereinafter provided in section two hundred and ninety-six.

See sections 265, 297, 479a, 724.

Act of January 17, 1887 (24 Stat. L. 361); Comp. Stat. D. C. p. 4, sec. 6. 32 Stat. L. pt. 1, p. 528.

SEC. 264. EXECUTOR RESIDUARY LEGATEE.—If the executor is the residuary legatee of the personal estate of the testator, or provided the residuary legatee of full age shall notify his consent to the court, he may, instead of the bond prescribed as aforesaid, give bond with security approved by the court, and in a penalty prescribed by the court, conditioned to pay all the debts and just claims against the testator, and all damages which shall be recovered against him as executor, and all legacies bequeathed by the will, in which case he shall not be required to file any inventory or render any account. And if such bond be given by the executor, he shall be answerable for the full amount of all debts, claims, and damages that may be recovered against him as executor as if he were sued in his own right, and any legatee may recover the full amount of his legacy in a suit on the executor's bond or in equity, and the giving of the bond shall be considered an assent to the legacy: *Provided*, That the surety or sureties in said bond shall not be liable for a greater amount than the penalty thereof.

See section 275.

Act of Maryland of 1798, ch. 101, subch. 14, sec. 6; Comp. Stat. D. C., p. 19, sec. 80.

SEC. 265. JOINT EXECUTOR.—When two or more persons are appointed executors, the court may take a separate bond with security from each of them or a joint bond with security from all of them together.

SEC. 266. LETTERS OF ADMINISTRATION CUM TESTAMENTO ANNEXO.—If there be only one executor named in the will, and he shall have been present at the probate of the will, and shall not within twenty days thereafter file a bond and qualify as executor by taking the oath aforesaid, letters of administration with the will annexed may be granted as if no executor had been named.

Act of Maryland of 1798, ch. 101, subch. 3, sec. 3; Comp. Stat. D. C., p. 6, sec. 11.

SEC. 267. ABSENT EXECUTOR.—If said executor shall not have been present at the probate of the will, but shall be within the District, a summons may be issued to him, either at the instance of any person interested or ex officio by the register of wills, requiring him to appear and file his bond as required by law within twenty days after service of said summons; and if he be not found in said District, notice shall be given to him by publication to appear within thirty days after the first publication of said notice, and on his failure to appear and give his bond and qualify by taking the prescribed oath, as aforesaid, administration may be granted as if no executor had been named in the will.

Act of Maryland of 1798, ch. 101, subch. 3, sec. 4; Comp. Stat. D. C., p. 6, sec. 12.

SEC. 268. SUMMONS TO EACH OF SEVERAL EXECUTORS.—If there be more than one executor named in a will, there may be the same proceeding with respect to each of them as if he were the sole executor, and any circumstances under which letters of administration may be granted on failure of a sole-named executor shall authorize the granting of letters testamentary to one or more of the executors on failure of one or more of the others; and any circumstances under which letters of administration may be granted on failure of a sole-named executor shall authorize the granting of such letters of administration on failure of all the executors named to appear and qualify as aforesaid.

Act of Maryland of 1798, ch. 101, subch. 3, sec. 6; Comp. Stat. D. C. p. 7, sec. 14.

SEC. 269. RENUNCIATION.—If any executor named in a will shall file or transmit to the probate court an attested renunciation of his executorship, there shall be the same proceeding with respect to granting letters testamentary or of administration as if the party so renouncing had not been named in the will.

See section 291.

Act of Maryland of 1798, ch. 101, subch. 3, sec. 7; Comp. Stat. D. C. p. 7, sec. 15.

SEC. 270. EXECUTOR DISQUALIFIED.—If any person named as executor be disqualified from serving, letters testamentary or of administration may be granted as if he had not been named as executor.

See section 261.

SEC. 271. NO POWER TO ACT WITHOUT LETTERS.—In case letters testamentary shall be granted to one or more of the executors named in a will on failure of the rest, no executor not named in said letters shall in any manner interfere with the administration; and if letters of administration with the will annexed shall be granted, no executor named in the will shall in any manner interfere with the administration; and no executor named in a will shall, before letters testamentary are granted to him, have any power to dispose of any part of the estate of the deceased or to interfere therewith, further than is necessary to collect and preserve the same.

Act of Maryland of 1798, ch. 101, subch. 3, sec. 8; Comp. Stat. D. C. p. 7, sec. 16.

SEC. 272. FORM.—The following shall be the form of letters testamentary to be issued under the seal of the probate term of the supreme court of the District of Columbia:

District of Columbia, to wit:

The United States of America.

To all persons to whom these presents shall come, greeting:

Know ye that the last will and testament of -----, of -----, deceased, hath, in due form of law, been exhibited, proved, and recorded in the office of the register of wills of the District of Columbia, a copy of which is to these presents annexed, and administration of all the goods, chattels, and credits of the deceased is hereby granted and committed unto -----, the executor by said will appointed.

Witness (A B) the chief justice of the supreme court of the District of Columbia, this ----- day of -----.

Test:

C D, Register of Wills.

SEC. 273. LETTERS OF ADMINISTRATION.—On the death of any person leaving real or personal estate in the District, letters of administration on his estate may be granted, on the application of any person interested, on proof, satisfactory to the probate court, that the decedent died intestate.

See section 260.

Act of Maryland of 1798, ch. 101, subch. 5, secs. 2, 3; Comp. Stat. D. C. p. 12, secs. 40, 41.

In re Dahlgren, 30 App. D. C. 588 (1908), 36 W. L. R. 198. (See sec. 116 supra.)

A claim against the United States does not furnish the foundation for a local administration when the decedent was domiciled in another jurisdiction at the time of his death. In re Estate of Coit, 3 App. D. C. 246 (1894); 22 W. L. R. 319.

SEC. 274. BOND.—Every administrator, except corporations authorized to act as administrators, shall, before entering on his duties, file in the probate court his bond to the United States, with security approved by the court, in such penalty as the court shall direct, with condition to administer according to law all the money, goods, chattels, rights, and credits of the deceased; and when the court shall have ordered the sale of the decedent's real estate, he shall give a like bond conditioned to administer the proceeds of the real estate that may be sold for the payment of the decedent's debts which shall come into his possession, or to the possession of any other person for him,

and in all other respects perform the trust reposed in him, and shall also take and subscribe an oath similar to that prescribed for executors.

See sections 294-296, 479a.

SEC. 275. SPECIAL BOND.—If the person appointed as administrator shall be entitled to the residue of the estate after the payment of the debts, he may, instead of the bond herein provided for, execute a bond, with security approved by the court, in such penalty as the court may consider sufficient, conditioned for the payment of all the debts and claims against the deceased, and all damages which shall be recovered against him as administrator; and where the administrator shall file the consent in writing of those entitled to the residue and they shall all be of full age, the court may, if it see fit, direct that only such special bond be given, and in such cases the administrator shall not be required to return any inventory or account, but shall be personally answerable for all debts, claims, and damages that may be recovered against him, in like manner as the executor who gives a similar bond: *Provided*, That the surety or sureties in said bond shall not be liable for a greater amount than the penalty thereof.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 528), repealing 31 Stat. L., pt. 1, p. 1189.

See sections 264, 479a.

Act of Maryland of 1798, ch. 101, subch. 14, sec. 7; Comp. Stat. D. C., p. 19, sec. 81.

SEC. 276. PERSONS ENTITLED.—If the intestate leave a widow or surviving husband and a child or children, administration, subject to the discretion of the court, shall be granted either to the widow or surviving husband or to the child, or one or more of the children qualified to act as administrator, and further subject to the discretion of the court as follows:

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 561), repealing 31 Stat. L., p. 1189.

Act of Maryland of 1798, ch. 101, subch. 5, secs. 10-19, 21-23; Comp. Stat. D. C., p. 14, secs. 49-62.

See *Dennis v. Hamilton*, 48 App. D. C. 160 (1918) cited under sec. 119 supra.

SEC. 277. If there be a widow or surviving husband and no child, the widow or surviving husband shall be preferred, and next to the widow or surviving husband or children a grandchild shall be preferred.

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 561), repealing 31 Stat. L., p. 1189.
See citations under section 276.

SEC. 278. If there be neither widow or surviving husband, nor child, nor grandchild to act, the father shall be preferred; and if there be no father, the mother shall be preferred.

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 561), repealing 31 Stat. L., p. 1189.
See citations under section 276.

SEC. 279. If there be neither widow or surviving husband, nor child, nor grandchild, nor father, nor mother to act, brothers and sisters shall be preferred.

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 561), repealing 31 Stat. L., p. 1189.
See citations under section 276.

SEC. 280. If there be neither widow or surviving husband, nor child, nor grandchild, nor father, nor mother, nor brother, nor sister, the next of kin shall be preferred.

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 562), repealing 31 Stat. L., p. 1189.
See citations under section 276.

SEC. 281. Males shall be preferred to females in equal degree.

SEC. 282. Relations of the whole blood shall be preferred to those of the half blood in equal degree, and relations of the half blood shall be preferred to relations of the whole blood in a remoter degree.

SEC. 283. Relations descending shall be preferred to relations ascending, in the collateral line; that is to say, for example, a nephew shall be preferred to an uncle.

SEC. 284. None shall be preferred in the ascending line beyond a father or mother, or in the descending line below a grandchild.

SEC. 285. A feme sole shall be preferred to a married woman in equal degree.

SEC. 286. Relations on the part of the father shall be preferred to those on the part of the mother, in equal degree.

SEC. 287. If any person described in the foregoing sections should be incompetent to serve, then administration shall be granted as if such person were not living.

See section 276.

SEC. 288. If there be no relations, or those entitled decline or refuse to appear and apply for administration, on proper summons or notice, administration may be granted to the largest creditor applying for the same; and if creditors neglect to apply, it may be granted at the discretion of the court.

See section 276.

SEC. 289. NOTICE OF APPLICATION.—Upon any application for letters of administration, such notice thereof shall be given, by publication or otherwise, as the rules of the court may require.

32 Stat. L., pt. 1, p. 528.

SEC. 290. WILL PROVED AFTER LETTERS GRANTED.—If administration be granted, and a will disposing of the estate of the deceased shall afterwards be proved according to law, and letters testamentary shall have issued thereon, the same shall be considered a revocation of the letters of administration. But the administrator shall not be held to answer for any acts done by him according to law, in good faith, and in ignorance of such will and before any actual or implied revocation of his letters; and the executor obtaining letters shall be authorized to prosecute any actions at law or in equity commenced by the administrator and obtain judgment in his own name, and likewise to defend any suit commenced against the administrator; and said executor shall have the benefit of all judgments obtained by the administrator and be bound by all judgments obtained against him to the extent of assets received by said executor, unless such judgments were obtained by fraud. And it shall be the duty of said administrator to account for and deliver to the executor without delay all goods, chattels, and personal estate and proceeds of any realty sold in his possession, belonging to the de-

ceased, in default of which his bond may be put in suit by the executor or administrator cum testamento annexo.

And if distribution of the estate, or any part thereof, shall have been lawfully made by the administrator, the distributee or distributees, and their personal representatives, and not the administrator so distributing the estate, shall be answerable for the property so distributed, or its value, to the person or persons thereto entitled.

And if any will be hereafter adjudged invalid in any action begun after distribution of the estate, or any part thereof, lawfully made by the executor or executrix, in good faith and without knowledge on his or her part of the invalidity of such will, and without notice that such action was intended, the distributee or distributees of the property, and their personal representatives, and not such executor or executrix, shall be answerable for the property, or its value, to the person or persons thereto entitled.

32 Stat. L., pt. 1, p. 528, repealing 31 Stat. L., pt. 1, p. 1189.

Act of Maryland of 1798, ch. 101, subch. 5, sec. 4; Comp. Stat. D. C., p. 12, sec. 42.

Letters of administration granted on a petition setting out the existence of a will and averring that no proceedings had been taken for its probate and seeking no adjudication as to the will, and the order being silent on that point, is not an adjudication that decedent died intestate. *Morris v. Foster*, 51 App. D. C. 238 (1922); 50 W. L. R. 178. A subsequent probate of the will and granting of letters testamentary revoke the letters of administration. *Ib.*, citing with approval *In re Coit*, 3 App. D. C. 246.

SEC. 291. DECLINING ADMINISTRATION.—If any person entitled to administration shall, in writing, decline the same, the court shall proceed as if such person were not entitled.

See section 269.

Act of Maryland of 1798, ch. 101, subch. 14, sec. 1; Comp. Stat. D. C. p. 16, sec. 65.

SEC. 292. RESIGNATION.—If any person, after having accepted the office of executor or administrator, shall desire to retire from and resign the same, he may file his petition to that effect, accompanied by a full and particular account, under oath, of his receipts and disbursements, if any, and the court shall thereupon direct such notice as it may think proper to be given of said application, and, if no cause be shown to the contrary, may release and discharge him from his office and pass such order as to costs and commissions and impose such terms in other respects as the nature of the case may require: *Provided*, That such executor or administrator shall not, by said discharge, be released from any liability for past acts, defaults, or omissions of duty.

SEC. 293. FORM.—The form of letters of administration shall be as follows:

District of Columbia, to wit:

The United States of America.

To all persons to whom these *presents* shall come, greeting:

Know ye that administration of the goods, chattels, and credits of _____, late of _____, deceased, is hereby granted and committed unto _____, of _____.

Witness (A B) the chief justice of the supreme court of the District of Columbia.

Test:

C D, Register of Wills.

SEC. 294. PERSONS OVER EIGHTEEN YEARS OF AGE.—In case letters testamentary or of administration shall be granted to any person above eighteen but under twenty-one years of age, the bond executed by him for the faithful performance of his duties shall be as binding as if he were of full age.

See sections 274, 479a.

Act of Maryland of 1798, ch. 101, subch. 4, sec. 7; Comp. Stat. D. C. p. 12, sec. 37.

SEC. 295. APPLICATION FOR LETTERS.—Whenever any person shall apply to the probate court for letters testamentary or of administration, he shall set forth, under oath, as fully as possible, all the personal and real estate left by the decedent and the amount of his debts as far as can be ascertained; and the penalty of the bond required of him, except in the cases provided for in section two hundred and sixty-three, two hundred and sixty-four, and two hundred and seventy-five aforesaid, shall be sufficient to secure the proper application of all the personal estate of the testator or intestate; and when it shall become necessary to sell the real estate of the decedent, in part or in whole, the executor or administrator shall give such additional bond, with approved security, as shall be directed by the court, to secure the proper application of the proceeds arising from such sale or sales. And whenever an executor is empowered by the will to make sale of the real estate of the testator, for any purpose, he shall account for said proceeds in said court.

See sections 274, 479a.

SEC. 296. ADDITIONAL BOND.—Whenever the probate court shall be satisfied that the bond already given by an executor or administrator is insufficient, the said executor or administrator may be required to file an additional bond, and on his failure to do so his letters may be revoked. And upon the revocation of letters testamentary or of administration under this provision, the executor or administrator whose letters are so revoked shall forthwith deliver to any substituted executor or administrator all the assets of his testator or intestate in his possession or under his control.

See sections 274, 479a.

R. S. D. C., secs. 974-976; Comp. Stat. D. C., p. 4, secs. 1-3.

Court has power, upon petition of attorney who has contract with executrix for payment of a fee, but no lien on proceeds of judgment, alleging insolvency of executrix and her intention to remove the fund from the jurisdiction on its receipt, to require the executrix to give additional bond, or revoke her letters and thus prevent collection of judgment by her. *Parish v. McGowan*, 39 App. D. C. 184 (1912), reversed on other grounds 237 U. S. 285.

See also *Cropper v. McLane*, 6 App. D. C. 119 (1895); 23 W. L. R. 262, dismissed, 163 U. S. 682.

SEC. 297. ACTIONS ON BONDS.—Every bond executed by an executor or administrator shall be recorded in the office of the register of wills; and any person conceiving himself to be interested in the administration of the estate shall be entitled to have or demand a copy of such bond, under the hand and seal of the register of wills, on which an action may be maintained, in the name of the United States, for the use of the party interested, and judgment may be recovered in such action for the damage actually sustained. And an administrator appointed in the place of an executor or administrator who has resigned, been removed, or whose letters have been revoked, may in like manner

maintain an action against the executor or former administrator and his sureties, on his administration bond, for all loss and damage to the estate resulting from this breach of duty. No creditor shall be entitled to maintain an action on a testamentary or administration bond for any claim against a testator or intestate until, *when practicable*, an action has been commenced against the executor or administrator of the deceased and a summons issued therein has been returned "Not to be found," or a writ of fieri facias or of attachment, issued on a judgment against such executor or administrator, has been returned "nulla bona," or until such apparent insolvency of the executor or administrator or insufficiency of his effects as in the judgment of the court before which such action may be tried shall show the said creditor to be without remedy except by such action on the executor's or administrator's bond.

See sections 302, 344.

32 Stat. L. pt. 1, p. 529.

Act of Maryland of 1798, ch. 101, subch. 3, sec. 10; act of Maryland of 1720, ch. 24, sec. 2; Comp. Stat. D. C., p. 8, secs. 18, 19.

Quaere: Whether a judgment or decree against an administrator is conclusive evidence of the debt in an action against the surety on his bond, although the preponderance of authority seems to affirm that it is. *Bonding Co. v. U. S. use Paynter*, 23 App. D. C. 535 (1904); 32 W. L. R. 362. "The requirement of execution and return was satisfied, notwithstanding the return was made the next day after issue, by order of the plaintiff's attorney." *Ib.*

SEC. 298. DEATH, AND SO FORTH, OF EXECUTOR NAMED.—In case any will admitted to probate shall not appoint an executor, or the executor therein appointed shall have died or renounced the executorship, or shall be incompetent to serve, administration shall be granted with the will annexed to the person who would have been entitled to administration in case of the intestacy of the deceased testator: *Provided, however*, That if there be a residuary legatee named in such will, he shall be preferred to all, except a widow. And the condition of the bond of the administrator so appointed and the oath to be taken by him and his duties and liabilities shall be the same if he had been appointed executor in the will and had received letters testamentary.

See section 262.

Act of Maryland of 1798, ch. 101, subch. 5, sec. 24; Comp. Stat. D. C., p. 16, sec. 63.

SEC. 299. LETTERS DE BONIS NON.—If an executor or administrator shall die before the administration of the estate is completed, letters of administration de bonis non or de bonis non cum testamento annexo, as the case may require, shall be granted, in the discretion of the court, giving preference, however, to the person who would be entitled in the order hereinbefore given, if he shall actually apply for the same; and the form of the letters shall be the same as in the case of an original administration, except that it shall be confined to the property of the deceased not already administered, and the authority shall be to administer all property herein described as assets and not distributed and delivered or retained by the executor or former administrators, under the court's direction.

Act of Maryland of 1798, ch. 101, subch. 14, sec. 2; Comp. Stat. D. C., p. 13, sec. 45.

SEC. 300. EXECUTOR OF EXECUTOR.—In no case shall the executor of an executor, as such, be entitled to administration de bonis non on the estate of the first deceased.

Act of Maryland of 1798, ch. 101, subch. 5, sec. 6; Comp. Stat. D. C., p. 13, sec. 44.

SEC. 301. ORDERS AGAINST REPRESENTATIVE OF DECEASED.—On the application of an administrator de bonis non the court may order the executor or the administrator of a deceased executor or administrator to deliver over to him all the personal property that was in the hands of the said deceased executor or administrator, as such, and also all the money, bonds, notes, accounts, and evidences of debt which the said deceased executor or administrator may have taken, received, and had at the time of his death, including the proceeds of sale of either personal or real estate made by said deceased executor or administrator, which shall be deemed unadministered assets.

SEC. 302. On the failure of said executor or administrator to comply with said order by a day named, the court may enforce its order by attachment against such executor or administrator, and may direct the bond of the deceased executor or administrator, or that of the executor or administrator so failing, or both, to be put in suit for the use of the administrator de bonis non.

SEC. 303. The executor or administrator of the deceased executor or administrator shall return, on oath, to the court, on or before the day named as aforesaid, a list of the bonds, notes, accounts, and money aforesaid, and shall be entitled to retain out of the money such commission as the court shall allow, not exceeding ten per centum on the principal inventory, and the personal estate and money turned over by him shall be assets in the hands of the administrator de bonis non, to be accounted for by him as such.

See sections 365, 370, 371.

"An executor or administrator may agree to serve for less than the compensation fixed in the statute, and if he does so the agreement will be enforced." *Washington Loan & Trust Co. v. Convention of Protestant Episcopal Church*, 51 W. L. R. 758 (1923), (Ct. of App.). Executor qualifying under will fixing commission at 3 per cent can not subsequently claim a larger sum, although it acted on advice of counsel that the limitation was void and stated in its petition that it based its application on that advice. *Ib.*, citing *McIntire v. McIntire*, 14 App. D. C. 337, 27 W. L. R. 198; 192 U. S. 116. As to allowance of commission, see also *Howard v. Howard*, 38 App. D. C. 575 (1912); 40 W. L. R. 293; *Sinnott v. Kenaday*, 14 App. D. C. 1 (1899); 27 W. L. R. 82; *Brosnan v. Fox*, 52 App. D. C. 141 (1922); 50 W. L. R. 760; *Marfield v. McCurdy*, 25 App. D. C. 342 (1905); 33 W. L. R. 450.

SEC. 304. LETTERS AD COLLIGENDUM.—Letters ad colligendum may be granted to one or more persons in case of a contest in relation to a will, or the absence of the executor from the District, or his delay in qualifying, or for other sufficient cause, and the form of such letters shall be as follows:

To all persons to whom these presents shall come, greeting:

Know yet that, whereas -----, of -----, deceased, had, as is said, at his decease, personal property within the District of Columbia, administration whereof can not immediately be granted, but which, if speedy care be not taken, may be lost, destroyed, or diminished, to the end that the same may be preserved for those who

may appear to have a legal right or interest therein, we do hereby request and authorize _____, of _____, to secure and collect said property, wheresoever the same may be, in said District, whether the same be goods, chattels, debts, or credits, and to make a true inventory thereof and exhibit the same with all convenient speed, with an account of his collections, into the office of the register of wills.

Witness (A B) the chief justice of the supreme court of the District of Columbia.

Test:

C D, Register of Wills.

See sections 305-308.

Act of Maryland of 1798, ch. 101, subch. 3, secs. 14, 15; Comp. Stat. D. C., p. 9, secs. 24, 25.

Guthrie v. Welch, 24 App. D. C. 563 (1905); see section 116, supra.

SEC. 305. Every collector, except corporations authorized to act as such, before letters shall be issued to him, shall execute a bond to the United States, in a penalty and with security to be approved by said court, with the following condition:

"The condition of the above obligation is such that if the above bounden _____ shall well and honestly discharge the office of collector of the goods, chattels, and personal estate of _____, deceased, in the District of Columbia, and shall make or cause to be made a true and perfect inventory or inventories of such of said goods, chattels, personal estate, and debts as shall come to his possession or knowledge and make return of the same to the probate court of the District, and shall also deliver to the person or persons who shall be authorized by the court to receive them such of said goods, chattels, personal estate, and debts as shall come to his possession, except such as shall be allowed for by said court, then the said obligation shall be void; it shall otherwise be in full force and virtue at law." And he shall also take and subscribe the following oath: "I, _____, do swear that I will well and truly discharge the office of collector of the goods, chattels, and personal estate of _____, deceased, according to the tenor of the letters granted me by the probate court of the District of Columbia and the directions of law, to the best of my knowledge, so help me God."

Act of Maryland of 1798, ch. 101, subch. 3, secs. 16, 17; Comp. Stat. D. C., p. 10, secs. 26, 27.

SEC. 306. DUTIES OF COLLECTOR.—The collector shall collect the goods, chattels, and personal estate of the deceased, including the debts due him, and cause the same to be appraised and return an inventory thereof, as an administrator is required to do, and may, under the authority of the court, sell perishable articles and bring suits for debts or other property, as an administrator may do, and shall account for the money recovered. The said collector may, if authorized by the court, take possession of, hold, manage, conserve, and control all real estate affected by the will or wills in dispute, and said collector shall discharge, pendente lite, all the duties of an administrator, including the payment of debts, and shall be liable to an action by any creditor of the deceased and shall be entitled to the protection of any provision of law expressly relating to executors and administrators.

Said collector may be allowed a commission not exceeding 10 per centum on the personal property, debts due the estate, and rentals from real estate actually collected by him.

In the event that such collector is authorized by the court to take possession of the real estate affected by such will or wills as hereinbefore set forth, the letters of collection shall so expressly specify, and his bond as such collector, in addition to the several matters set forth in section 305, shall specifically include the faithful performance of his duties with respect to such real estate.

Act of April 19, 1920 (41 Stat. L. pt. 1, p. 562), repealing 31 Stat. L. p. 1189.

Act of Maryland of 1798, ch. 101, subch. 3, sec. 18; Comp. Stat. D. C., p. 10, sec. 28.

Act of June 8, 1898, sec. 9 (30 Stat. L. 434).

Collector has no power under this section (as amended) to prosecute appeal from order disbaring his decedent from practice of law. *Metzger v. O'Donoghue*, 53 App. D. C. 107 (1923); 51 W. L. R. 364.

As to powers of collector prior to act of April 19, 1920, see *Brandenberg v. Dante* (49 App. D. C. 141 (1919); 48 W. L. R. 25); *Berry & Whitmore v. Dante* (43 App. D. C. 110 (1915); 43 W. L. R. 88); *Hutchins v. Hutchins* (41 App. D. C. 122 (1913); 42 W. L. R. 4); *Hutchins v. Dante* (40 App. D. C. 262 (1913); 41 W. L. R. 226).

SEC. 307. WHEN POWERS TO CEASE.—On the granting of letters testamentary or of administration the power of any such collector shall cease, and it shall be his duty to deliver, on demand, all the property and money of the decedent in his hands, except as before excepted, to the person obtaining such letters, and the executor or administrator may be permitted to prosecute any suit commenced by said collector as if the same had been begun by said executor or administrator, and may also defend any suit brought against said collector by any creditor of the deceased.

Act of April 19, 1920 (41 Stat. L. 562), repealing 31 Stat. L. p. 1189.

Act of Maryland of 1798, ch. 101, subch. 3, sec. 20; Comp. Stat. D. C. p. 10, sec. 30.

See cases cited under section 306.

SEC. 308. If the said collector shall neglect or refuse to deliver over the property and estate to the executor or administrator, the court may, by citation and attachment, compel him to do so, and the executor or administrator may also proceed, by civil action, to recover the value of the assets from him and his sureties by action on his bond.

Act of April 19, 1920 (41 Stat. L. 562), repealing 31 Stat. L. p. 1189.

Act of Maryland of 1798, ch. 101, subch. 3, sec. 20; Comp. Stat. D. C., p. 10, sec. 30.

See cases cited under section 306.

SEC. 308a. SERVICE UPON FIDUCIARY WHEN NOT TO BE FOUND.—In the case of the grant of either original or ancillary letters testamentary, or of administration, or of collection, or of guardianship, the person designated shall, if a nonresident of the District of Columbia, file in the office of the register of wills, before the issuance of such letters, an irrevocable power of attorney designating the register of wills and his successors in office as the person upon whom all notices and process issued by any competent court in the District of Columbia may be served, with like effect as personal service, in relation to any suit, matter, cause, or thing affecting or pertaining to the estate in which the letters are issued. It shall be the duty of said register of wills to forthwith forward by registered mail to the address of such fiduciary, which shall be stated in said power of attorney, any notice or process served upon said register as aforesaid.

In the event that any fiduciary shall fail to file such power of attorney within ten days after the passing of the order of appointment, such order shall thereupon stand revoked, and he shall forfeit all rights to the office.

Interpolated by act of April 19, 1920 (41 Stat. L., pt. 1, p. 562).

SUBCHAPTER TWO

INVENTORY

SEC. 309. INVENTORY TO BE MADE.—Every executor, administrator, or collector shall, within three months after his appointment, or such longer time as the court may allow, make and return, upon oath, into court a true inventory of all the goods, chattels, moneys, and credits of the deceased which are by law to be administered and which shall have come to his possession or knowledge; and if the court shall think fit it may also order him to include in the inventory all the real estate of the deceased: *Provided*, That this section shall not apply to the cases provided for in sections two hundred and sixty-four and two hundred and seventy-five of this code.

See sections 119, 124, 126.

Act of Maryland of 1798, ch. 101, subch. 6, sec. 1; Comp. Stat. D. C., p. 16, sec. 66.

Humphrey v. Conger, 7 Appis. D. C. 23 (1895); 23 W. L. R. 425.

SEC. 310. APPRAISERS.—On the granting of letters testamentary or of administration or letters of collection, except in the aforesaid excepted cases, a warrant shall issue to two suitable persons not interested in the estate to appraise the estate of the deceased, known to them or shown to them by the executor, administrator, or collector, and they shall severally take and subscribe an oath well and truly, without partiality or prejudice, to value the goods, chattels, and personal estate and real estate (if so directed) of the deceased, as far as the same shall come to their knowledge, to the best of their skill and judgment.

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 563), repealing 31 Stat. L., pt. 1, p. 1189.

Act of Maryland of 1798, ch. 101, subch. 6, sec. 2; Comp. Stat. D. C., p. 16, sec. 68.

SEC. 311. On the death, refusal, or neglect of any appraiser to act, another person may be appointed in his stead.

Act of Maryland of 1798, ch. 101, subch. 6, sec. 3; Comp. Stat. D. C., p. 16, sec. 67.

SEC. 312. NOTICE.—It shall be the duty of the executor, administrator, or collector or of the appraisers to give notice to the persons immediately interested in the administration, or at least two of them, if they are numerous, of the time and place of making said appraisement, and thereupon they shall proceed at said time and place to value said property and estate, setting down each article or item separately, with the value thereof, in dollars and cents, and when such appraisement shall have been completed they shall

certify the same under their hands and seals, and the same shall be returned with the inventory.

32 Stat. L., pt. 1, p. 529.

Act of Maryland of 1798, ch. 101, subch. 6, secs. 5-7; Comp. Stat. D. C., p. 17, secs. 70-72.

SEC. 313. CONTENTS OF INVENTORY.—The inventory shall contain a particular statement of all bonds, mortgages, notes, and other securities for the payment of moneys belonging to the deceased, and of all other debts and accounts due him, which are known to the executor, administrator, or collector, who shall designate those debts which he considers sperate and those which he considers desperate, and also an account of all moneys belonging to the deceased which shall come to his hands. And whenever, after an inventory has been returned, assets not therein included shall come to the knowledge of the executor, administrator, or collector an additional inventory and appraisalment shall be promptly prepared and filed in the manner aforesaid.

Act of Maryland of 1798, ch. 101, subch. 6, secs. 8-10; Comp. Stat. D. C., p. 17, secs. 73-75.

SEC. 314. EXCEPTIONS.—There shall be excepted from the inventory the wearing apparel of the deceased, family pictures, the family Bible, and schoolbooks used in the family, and provisions for the support of the family on hand at the time of decedent's death. But if said decedent shall have been the head of a family, or a householder, the property exempt under chapter twenty-seven, as therein stated, shall so continue exempt from all claims against said decedent, and shall be distributed by the court to such members of the family or household as in the judgment of the court the necessity and exigencies of the particular case may require.

See section 1105.

Family portraits "seem to have been recognized as heirlooms at common law, and as such went to the heirs at law, and not to the executor * * *." By custom they are not included in the inventories in the District. Per Hagner, J., in *Brown v. Easterhazy*, 25 W. L. R 478 (1897).

Exemption follows proceeds of sale. *Howard v. Howard*, 38 App. D. C. 575 (1912); 40 W. L. R 293.

SEC. 315. COLLECTOR'S INVENTORY.—In case an inventory shall be returned by a collector, duly appointed, the executor or administrator thereafter administering shall, within three months after his appointment, either return a new inventory in place of the collector's inventory or an acknowledgment in writing that he has received from the collector the articles contained in the first inventory, and consents to be answerable for the same, as if said inventory had been made out by him as administrator, unless it shall appear that he has been prevented from making such return by the improper detention of the personal estate of the deceased by the collector.

Act of Maryland of 1798, ch. 101, subch. 6, sec. 11; Comp. Stat. D. C., p. 18, sec. 76.

SEC. 316. EXECUTOR, AND SO FORTH, NEGLECTING.—If there be more than one executor or administrator, any one or more of them, on the neglect of the rest, may, if authorized by the court, return an inventory.

Act of Maryland of 1798, ch. 101, subch. 6, sec. 14; Comp. Stat. D. C., p. 18, sec. 79.

SUBCHAPTER THREE

ASSETS

SEC. 317. WHAT ARE ASSETS.—Leases for years, estates for the life of another person or other persons, and all goods, wares, merchandise, utensils, furniture, things annexed to the freehold which may be removed without prejudice thereto, the growing crop on the land of the deceased, and every other species of personal property, not including the clothing of the widow and minor children of the deceased and personal ornaments suitable to their station, *and not including the property exempted by section three hundred and fourteen*, shall be included in the inventory, and, together with the proceeds of any real estate sold for the payment of debts, shall be considered assets to be administered by an executor or administrator.

32 Stat. L., p. 529.

Act of Maryland of 1798, ch. 101, subch. 7, sec. 1; Comp. Stat. D. C., p. 19, sec. 82.

As to rents accruing after testator's death see *Brosnan v. Fox*, 52 App. D. C. 143 (1922); 50 W. L. R. 760.

Ninety-nine-year lease, with option to purchase, is personalty. *Bean v. Reynolds*, 15 App. D. C. 125 (1899); 27 W. L. R. 482.

McCartney v. Fletcher, 10 App. D. C. 572 (1897); 25 W. L. R. 311.

SEC. 318. DEBTOR APPOINTED EXECUTOR.—The discharge or bequest, in a will, of any debt or demand of a testator against any executor named in a will, or against any other person, shall not be valid as against the creditors of the deceased, but shall be construed only as a specific bequest of such debt or demand, and the amount thereof shall be included in the inventory of the effects of the deceased and be assets for the payment of his debts, if necessary for that purpose, and, if not so necessary, shall be paid in the same manner and proportion as other specific legacies.

SEC. 319. The naming of any person as executor in a will shall not operate as a discharge or bequest of any just claim which the testator had against such executor; but such claim shall be included among the credits and effects of the deceased in the inventory, and the executor shall be liable for the same, as for so much money in his hands, at the time such debt or demand becomes due; and he shall apply and distribute the same, in the payment of debts and legacies and among the next of kin, as part of the personal estate of the deceased: *Provided, That in such cases the sureties of the executor shall not be liable if the claim against the executor would have been uncollectible if some other person had been executor.*

Act of June 30, 1902 (32 Stat. L. 529) adding proviso.

Act of Maryland of 1798, ch. 101, subch. 8, sec. 20, Comp. Stat. D. C., p. 26, sec. 106.

SEC. 320. On the failure of the executor to give in such claim in the list of debts due the deceased, any person interested in the administration may allege the same by petition to said probate court, and the said court, with consent of the parties, may decide on the same, or it may be referred by the parties, with the court's approval; or at the instance of either party the court may direct an issue to be tried by a jury; and if said claim shall in any of such proceedings be decided to be a just claim of the decedent against the executor, said executor shall be charged with the amount thereof as aforesaid.

Act of Maryland of 1798, ch. 101, subch. 8, sec. 20; Comp. Stat. D. C., p. 26, sec. 106.

SEC. 321. DEBT DUE BY ADMINISTRATOR OR COLLECTOR.—In like manner it shall be the duty of every administrator and collector to give in a claim against himself, and on his giving it, or failure so to do, there shall be the same proceeding as above described with regard to an executor; and the same rule shall apply to his sureties.

Act of April 19, 1920 (41 Stat. L. pt. 1, p. 563) repealing 31 Stat. L. pt. 1, p. 1189, as amended by 32 Stat. L. 529.

Act of Maryland of 1798, ch. 101, subch. 8, sec. 21; Comp. Stat. D. C., p. 26, sec. 107.

SUBCHAPTER FOUR

SALES

SEC. 322. SALES OF PERSONAL ESTATE.—In case any executor or administrator shall not have money sufficient to discharge the just debts of and claims against the decedent, the probate court shall, on his application, made after the return of an inventory, direct a sale of the personal property therein contained, or of such part as the court may think proper, and in such manner and on such terms as the court may direct. The court shall have power to direct a sale as aforesaid, if deemed by the court advantageous to the persons interested in the administration, on the application of any of the said persons.

See section 339.

Act of Maryland of 1798, ch. 101, subch. 8, secs. 3, 4; Comp. Stat. D. C., p. 21, secs. 89, 90.

SEC. 323. ORDER FOR SALE.—No executor or administrator shall sell any property of his decedent without an order of the probate court authorizing such sale; and any such sale made without a previous order authorizing it shall be void and pass no title to the purchaser. If any executor or administrator shall sell, pledge, or dispose of any property without such previous order, his letters may be revoked and an administrator appointed, whose duty it shall be immediately to recover possession of said property, and such removed executor or administrator may be proceeded against by attachment; but where there are two or more executors or administrators, and a sale, pledge, or disposition of property has been made without the consent of all, the revocation shall only extend to the person or persons so offending, and the remaining executors or administrators shall have power to discharge the duties of their office and institute proceedings for the recovery of the property and attachment as aforesaid.

"At common law an executor or administrator had absolute power of disposal over all personal property coming into his hands, including choses in action, and such sales protected purchasers, except where fraud appeared." *Insurance Co. v. Harris*, 45 App. D. C. 474 (1916); 44 W. L. R. 741. "Owing to this rule of the common law, statutes providing for the granting of decrees of court as to sales generally are construed to be for the protection of the administrator and not as a limitation of his power." *Ib.*

"The provisions of section 323 of our code were intended to apply merely to local executors and administrators dealing with property within this jurisdiction. The section declares, * * *, his letters may be revoked, clearly indicating, we think, that the prohibition was not intended to extend to contracts made by executors and administrators of other jurisdictions. In other

words, this statute was addressed to the constituent elements or validity of a local contract by executors and administrators, rather than to the procedure to be followed in establishing all contracts by executors and administrators, wherever made." *Ib.*

SEC. 324. The preceding section shall not be construed to apply to any case where an executor shall be authorized by will of his testator to make sale of any property.

SEC. 325. POWER OF SALE TO EXECUTOR.—In all cases in which a testator has directed his real estate to be sold for the payment of his debts or legacies, the executor may sell and convey the same, and shall account for the proceeds thereof to the probate court in the same manner that he is bound to account for the proceeds of personal estate; but such sale shall not be valid unless ratified by said court after notice given by publication according to the practice in equity. In case the executor shall refuse or decline to act, or shall die without executing the power vested in him, it shall be lawful for the court, on the application of any person interested, to appoint an administrator *de bonis non* with the will annexed to execute such power in the same manner in which the executor appointed by the will might have done.

See sections 94, 146-148.

SEC. 326. SURVIVOR OF SEVERAL TRUSTEES.—In all cases where two or more trustees shall be appointed by last will to execute a trust, or shall be empowered to sell, dispose of, or convey lands or other property devised to them jointly, upon the death of any one or more of them the survivor or survivors shall be held authorized to execute such trust or power; and if any one of such trustees shall in writing, signed by him and attested by a witness, relinquish or disclaim said trust or refuse to act under said will, and shall deliver such writing to the probate court of the District for record, the right of such trustee to act shall cease, and the remaining trustee or trustees appointed by said will shall be authorized to execute the trusts of said will and make all sales and execute all conveyances and other acts necessary for that purpose.

See section 94.

A trust charged upon the executors, as such, does not become extinct by the death of one of them, and if the executors were authorized to sell real estate, the survivor can sell it. *Kennedy v. Mangan*, 51 App. D. C. 296 (1922); 50 W. L. R. 226. Whether sale within time specified in will is of essence of the power, see *ib.*

SUBCHAPTER FIVE

SUITS

SEC. 327. SUITS BY AND AGAINST EXECUTORS, AND SO FORTH.—Executors and administrators shall have full power and authority to commence and prosecute any personal action at law or in equity which the testator or intestate might have commenced and prosecuted, except actions for injuries to the person or to the reputation; and they shall also be liable to be sued in the supreme court of said District in any action at law or in equity, except as aforesaid, which might have been maintained against the deceased; and they shall be entitled to or answerable for costs in the same manner as the de-

ceased would have been, and shall be allowed for the same in their accounts, unless it shall appear that there were not probable grounds for instituting or defending the suits in which judgments or decrees shall have been given against them.

See section 348.

32 Stat L., pt. 1, p. 529.

Act of Maryland of 1798, ch. 101, subch. 8, sec. 5; Comp. Stat. D. C., p. 22, sec. 91.

Section 1 of the municipal court act (41 Stat. L., pt. 1, p. 1310) and secs. 327 and 328 are in *pari materia*, and must be construed together. The municipal court has no jurisdiction over suits against executors or administrators. *Sanford v. Sanford*, 52 App. D. C. 315 (1923); 51 W. L. R. 202.

"An administrator or executor can not sue or be sued in his representative capacity in any other jurisdiction than the one of his appointment, except where it is permitted by the laws of the jurisdiction in which the suit is sought to be maintained." *Bryan v. Curtis*, 30 App. D. C. 234 (1908), citing *Plumb v. Bateman*, 2 App. D. C. 156 (1893). The right conferred by section 329 of the code does not imply "that suit can be maintained in the courts of the District against such administrator or executor." *Ib.* Cited with approval in *Ryan v. McAdoo*, 46 App. D. C. 117 (1917); 45 W. L. R. 85. *Griffith v. Stewart*, 31 App. D. C. 29 (1908), 26 W. L. R. 230, affirmed 217 U. S. 323. See section 329, *infra*.

Suit by daughter against father's administrator to recover for personal services rendered on implied contract. *Tuohy v. Trail*, 19 App. D. C. 79 (1901); 30 W. L. R. 3.

"An executor or administrator can not be sued in another jurisdiction than that in which the administration of the estate is depending, for an accounting, or for acts involving the administration of the estate, or the assets thereof in his hands as such executor or administrator." *Johns v. Herbert*, 2 App. D. C. 485 (1894); 22 W. L. R. 281. If, however, he becomes a trustee of the property, after the estate should be closed, "he is amenable to suit in the courts of any jurisdiction within which he may be found." *Ib.*

Tucker v. Nebeker, 2 App. D. C. 326 (1894); 22 W. L. R. 143.

Willard v. Wood, 1 App. D. C. 44 (1893); 21 W. L. R. 579, affirmed in 164 U. S. 502.

SEC. 328. JUDGMENTS AGAINST EXECUTORS, AND SO FORTH.—If the verdict of the jury in any suit against an executor or administrator be against such executor or administrator, or if he shall be willing to confess judgment, and the debt or damages which the deceased (if he or she were alive) ought to pay be ascertained by verdict, or confession, or otherwise, the court shall thereupon assess the sum which the executor or administrator ought to pay, regard being had to the amount of assets in his hands and the debts due to other persons; and if it shall appear to the court that there are assets to discharge all just claims against the deceased, the judgment shall be for the whole debt or damages found by the jury, or confessed, or otherwise ascertained, and costs; and if it shall appear to the court that there are not assets to discharge all such just claims, the judgment shall be for such sum only as bears a just proportion to the amount of the debt or damages and costs, regard being had to the amount of all the just claims and of the assets—that is to say, as the amount of all the said claims shall be to the assets, so shall the amount of the said debt or damages and costs be to the sum required, for which judgment is to be given.

And in no case shall the court proceed to assess as aforesaid and to pass such judgment against an executor or administrator until the time limited by law or by the court for the executor or administrator to pass his account shall have expired: *Provided*, That the said exec-

utor or administrator shall make oath (or affirmation, as the case may require) that he hath not assets to discharge all such just claims; and the account settled by the probate court, in which the debt or damages sued for ought to be stated, shall be evidence to show the amount of assets and claims; and the court shall have power, when the real debt or damages are ascertained, to refer the matter to an auditor to ascertain the sum for which judgment shall be given; and in case the judgment shall be for a sum inferior to the real debt or damage and costs, it shall go on and say "that the plaintiff be entitled to such further sum as the court shall hereafter assess on discovery of further assets in the hands of the defendant;" and the court, at any time afterwards, when applied to by the plaintiff, on three days' notice to the defendant or his attorney, may assess and give judgment for such further proportionable sum as the plaintiff shall appear entitled to, regard being had as aforesaid to the amount of the debt and other claims; and on any judgment passed as aforesaid a fieri facias may issue against the defendant, and either his own goods or the goods of the deceased may be thereupon taken and sold, and it shall be the duty of the executor or administrator to discharge said judgment or put it on a footing with other just claims, and on failure his administration bond may be put in suit by the plaintiff.

Act of Maryland of 1798, ch. 101, subch. 8, secs. 8, 9; Comp. Stat. D. C., p. 22, secs. 94, 95.

See cases cited under section 327.

SEC. 329. FOREIGN EXECUTORS AND ADMINISTRATORS.—It shall be lawful for any person or persons to whom letters testamentary or of administration have been granted by the proper authority in any of the United States or the Territories thereof to maintain any suit or action and to prosecute and recover any claim in the District in the same manner as if the letters testamentary or of administration had been granted to such person or persons by the proper authority in the said District; and the letters testamentary or of administration, or a copy thereof certified under the seal of the authority granting the same, shall be sufficient evidence to prove the granting thereof, and that the person or persons, as the case may be, hath or have administration: *Provided, nevertheless*, That the probate court of the District shall have the power, upon the petition of anyone interested, to require from such person or persons the security required by law in like cases from a resident administrator or executor, or the said court may grant auxiliary or ancillary letters, as the case may require, to the same or other persons.

Act of February 28, 1887 (24 Stat. L. p. 431); Comp. Stat. D. C., p. 5, sec. 7. See cases cited under section 327.

"Letters of administration obtained in the jurisdiction of the domicil of the decedent prevail over letters of administration de bonis non granted in this District, and the statute confers upon such foreign administrator the right 'to recover from any individual within the District of Columbia effects or money belonging to the testator or intestate, and that letters testamentary or of administration obtained in either of the States or Territories of this Union give a right to the person having them to receive or give discharges for assets, without suit, which may be in the hands of any person in the District of Columbia.' Kane v. Paul, 14 Pet. 33." Southern R. Co. v. Hawkins, 35 App. D. C. 313 (1910); 38 W. L. R. 425. Local administrator, however, may maintain action for death by wrongful act over the objection of the defendant where "the

foreign executor did not attempt to bring this suit, and is not here complaining because it was brought by appellee. In such a situation, we think, he may be presumed to have waived any right conferred upon him by the local statute, and that such waiver may be taken advantage of by the real party in interest." *Ib.* See *Telegraph Co. v. Lipscomb*, 22 App. D. C. 104 (1903); 31 W. L. R. 422.

A suit filed by a Maryland executor for specific performance of a contract to buy realty located in Maryland must be governed by the law of that State. *Griffith v. Stewart*, 31 App. D. C. 29 (1908) 36 W. L. R. 230, affirmed 217 U. S. 323. Such an executor may maintain specific performance without joining heirs. *Ib.*

SUBCHAPTER SIX

DEBTS

SEC. 330. DEBTS TO BE PROVED.—No executor or administrator shall discharge any claim against his decedent (otherwise than at his own risk) unless the same be first passed by the probate court, or unless the said claim shall be proved according to the following rules:

See section 121, 342.

Act of Maryland of 1798, ch. 101, subch. 8, sec. 22; Comp. Stat. D. C., p. 26, sec. 108.

"Under section 330 of the code the approval of a claim properly proved relieves the executor or administrator from liability if he elects to pay it; but, by section 342 he may contest it at law, and in such action the approval of the probate court is deprived of even evidentiary value * * *. It is settled in this District that the probate court is without jurisdiction to compel an executor or administrator to pay a claim asserted against a decedent's estate." *Miniggio v. Hutchins*, 43 App. D. C. 117 (1915), 43 W. L. R. 119, citing *Cook v. Speare*, 13 App. D. C. 446; *Richardson v. Daggett*, 24 App. D. C. 440 (see section 116, *supra*).

SEC. 331. VOUCHERS.—The voucher or proof of a judgment or decree shall be a short copy thereof under seal, attested by the clerk of the court where it was obtained, who shall certify that the said judgment or decree hath not been satisfied. There shall likewise be a certificate of some person authorized to administer an oath, indorsed on or annexed to a statement of the debt due on such judgment or decree, that the creditor or his agent since the death of the deceased hath taken before him the following oath, to wit: "That the creditor hath not received any part of the sum for which the judgment or decree was passed except such part (if any) as is credited"; and if the creditor on the judgment or decree be an assignee of the person who obtained it, the oath shall go on and say further, "and that to the best of his knowledge or belief no other person hath received any parcel of the said sum except such part (if any) as is credited," and an assignee shall also produce the assignment under the hand of the assignor; and if there be more than one assignment, each assignment shall be produced under the hand of the party assigning.

Act of Maryland of 1798, ch. 101, subch. 9, sec. 1; Comp. Stat. D. C., p. 26, sec. 109.

SEC. 332. In case of a specialty, bond, note, check, or protested bill of exchange, the vouchers shall be the instrument of writing itself, or a proved copy in case it be lost, with a certificate of the oath made as aforesaid since the death and indorsed on or annexed to the instrument, or a statement of the claim "that no part of the money intended to be secured by such instrument hath been received or any

security or satisfaction given for the same except what (if any) is credited."

Act of Maryland of 1798, ch. 101, subch. 9, sec. 4; Comp. Stat. D. C., p. 27, sec. 112.

SEC. 333. If the creditor in such instrument be an assignee, there shall be the same oath of the creditor or agent, according to the best of his knowledge and belief, with respect to any payments prior to the time of the assignment.

Act of Maryland of 1798, ch. 101, subch. 9, sec. 5; Comp. Stat. D. C., p. 27, sec. 113.

SEC. 334. In case of a bill of exchange or other commercial paper, the protest or other things which would be required (if the deceased were alive) shall be necessary to justify an executor or administrator in making payment or distribution.

Act of Maryland of 1798, ch. 101, subch. 9, sec. 6; Comp. Stat. D. C., p. 27, sec. 114.

SEC. 335. If the claim be for rent, there shall be produced the lease itself, or the deposition of some credible witness or witnesses, or an acknowledgment in writing of the deceased, establishing the contract and the time which hath elapsed during which rent was chargeable, and a statement of the sum due for such rent, with an oath of the creditor or agent indorsed thereon "that no part of the sum due for said rent or any security or satisfaction for the same hath been received except what (if any) is credited."

The proof of a claim for rent in arrear, so as to render the same a preferred claim, shall be the proofs and vouchers for rent aforesaid, and proof that the claim is such that an attachment therefor might be levied on said deceased's goods and chattels in the hands of the administrator, but the preference given for rent is not to impair the landlord's right of attachment if he thinks proper to exercise it.

Act of Maryland of 1798, ch. 101, subch. 9, sec. 7; Comp. Stat. D. C., p. 27, sec. 115.

SEC. 336. The vouchers or proofs of any claim on open account shall be a certificate of an oath taken by the creditor or agent since the death, indorsed on or annexed to the account, that the account as stated is just and true, and that he, the creditor, or any one for him, hath not received any part of the money stated to be due or any security or satisfaction for the same except what (if any) is credited.

Act of Maryland of 1798, ch. 101, subch. 9, sec. 8; Comp. Stat. D. C., p. 28, sec. 116.

Proof and presentation of claim under section 336 would operate to suspend the running of the statute of limitations. *Berry & Whitmore v. Dante*, 43 App. D. C. 110 (1915); 43 W. L. R. 88.

SEC. 337. When an affidavit or deposition to prove claims shall have been taken out of the District, the same shall be good if taken and certified as aforesaid by a notary public, or by some person there authorized to administer an oath, and certified to be such under the seal of the clerk of any court of record, or by any officer having official cognizance of the fact, and the said oath shall be as available as if taken before an officer authorized to administer an oath within this District: *Provided, That such additional certificate shall not be required as to notaries public within the United States or any place*

under the jurisdiction thereof when the seal of such notary is attached.

Act of June 30, 1902 (32 Stat. L., p. 529).

SEC. 338. If the creditor be an executor or an administrator the claim shall not be received, although vouched and approved as aforesaid, unless he make oath, to be certified as aforesaid, "that it does not appear from any book or writing of his decedent that any part of the said claim hath been discharged except what (if any) is credited, and that to the best of the deponent's knowledge and belief no part of the said claim hath been discharged and no security or satisfaction given for the same except what (if any) is credited."

Act of Maryland of 1798, ch. 101, subch. 9, sec. 14; Comp. Stat. D. C., p. 29, sec. 122.

SEC. 339. CLAIMS OF EXECUTORS, AND SO FORTH.—In no case shall an executor or administrator be allowed to retain for his own claim against the decedent, unless the same be passed by the probate court, and every such claim shall stand on an equal footing with other claims of the same nature.

See sections 318 et seq.

[SEC. 340. No executor or administrator shall be allowed in his account for any claim discharged by him, unless he produce the claim passed by the probate court, or proven as herein directed.]

Repealed by act of June 30, 1902 (32 Stat. L., pt. 1, p. 529).

Act of Maryland of 1798, ch. 101, subch. 8, sec. 19; Comp. Stat. D. C., p. 26, sec. 105.

SEC. 341. PLEA OF LIMITATIONS.—It shall not be considered as the duty of an executor or administrator to avail himself of the act of limitations to bar what he supposes to be a just claim, but the same shall be left to his honesty and discretion.

Act of Maryland of 1798, ch. 101, subch. 9, sec. 9; Comp. Stat. D. C., p. 28, sec. 117.

See report of William Clark Taylor, Esq., special master, in estate of Nathaniel M. Ambrose, administrator, No. 26071, probate court, District of Columbia, holding that heir may plead the statute of limitations in a proceeding to subject the real estate of a decedent to the payment of debts, notwithstanding the refusal of the administrator to do so.

SEC. 342. CLAIMS MAY BE DISPUTED.—No executor or administrator shall be obliged to discharge any claim of which vouchers and proofs shall be exhibited as aforesaid, but may reject and at law dispute the same in case he shall have reason to believe that the deceased never owed the debt, or had discharged the same, or a part thereof, or had a claim in bar.

See section 330 and cases cited.

Act of Maryland of 1798, ch. 101, subch. 9, sec. 13; Comp. Stat. D. C., p. 29, sec. 121.

SEC. 343. PASSING OF CLAIMS NOT CONCLUSIVE.—In no case shall the order made by the probate court that an account or claim will pass when paid be deemed of validity to establish such claim or account; but in case the executor or administrator thinks fit to contest the same such account or claim shall derive no validity from the order aforesaid, but shall be proved in the same manner as if no such order had been made.

See section 330, and cases cited.

SEC. 344. PAYMENT OF CLAIMS.—An executor or administrator shall, within thirteen months from the date of his letters, or within such further time, not exceeding four months longer, as shall be allowed by the probate court on his making oath that he has reason to apprehend that the personal estate and assets which are or shall be in his hands will be insufficient to discharge the just debts of and claims against the deceased, discharge all such claims known to him or pay each claimant his just proportion of the money then in his hands (retaining as herein directed); it shall likewise be his duty once in every term of six months after the first distribution to make a distribution of the money which hath since come to his hands until he shall have fully administered, and on failure his administration bond may be put in suit.

Act of Maryland of 1798, ch. 101, subch. 8, sec. 14; Comp. Stat. D. C. p. 24, sec. 100.

SEC. 345. NOTICE OF DISTRIBUTION.—In all cases where an executor or administrator is to make payment or distribution among the creditors of his decedent, he may give notice three successive weeks previously in some convenient newspaper of the time and place for making it; and in case the creditor shall not attend in person or by agent or attorney to receive the amount or proportionable part of his claim, all interest on such claim or proportionable part shall cease from that time: *Provided*, That the executor or administrator shall at any time thereafter on demand pay the said claims, or a proportionable part, to the party, his agent, or attorney duly authorized; and whenever the executor or administrator shall proceed to make an additional payment or dividend he may advertise as aforesaid, and interest shall stop as aforesaid; and if at the time for the making of any additional dividend a just claim, established as hereinbefore directed, shall be exhibited, the creditor shall be entitled to such sum as will place him on an equal footing with those who have already received a dividend.

Act of Maryland of 1798, ch. 101, subch. 8, sec. 16; Comp. Stat. D. C. p. 25, sec. 102.

SEC. 346. RETAINING FOR CLAIMS.—It shall be the duty of an executor or administrator to pay all just claims against his decedent exhibited to him, or a just proportionable part thereof, according to the assets; and if any claim be known to him (although the same be not exhibited) he shall retain the same, or a just proportionable part, for the benefit of the creditor: *Provided*, That if any executor or administrator shall have actual knowledge of a claim which has not been exhibited or passed he shall give notice in writing to the creditor, requiring the claim to be either exhibited or passed, as herein provided, within thirty days if such creditor be a resident and within ninety days if he be a nonresident of said District, and after the expiration of such period, and after the expiration of the period for distribution provided by section three hundred and forty-four hereof, the executor or administrator shall not be required to retain any part of the estate for the benefit of such creditor, unless in the meantime such claim shall have been so exhibited or passed.

Act of Maryland of 1798, ch. 101, subch. 8, sec. 10; Comp. Stat. D. C. p. 23, sec. 96.

SEC. 347. And if any action shall be commenced against an executor or administrator for the recovery of a larger debt or damages than he shall think due, so that the same can not be ascertained before verdict, the executor or administrator shall be allowed to retain such sum to meet the said debt or damages as the probate court shall allow, and if more than enough be allowed, the party shall afterwards account for it, but nothing shall be retained on account of such further debt or damages where the court shall be satisfied that there will be money sufficient coming in after such dividend to meet the said damages, or a just proportion thereof, regard being had to other claims.

Act of Maryland of 1798, ch. 101, subch. 8, sec. 11; Comp. Stat. D. C. p. 24, sec. 97.

SEC. 348. If a claim be exhibited against an executor or administrator which he shall think it his duty to dispute or reject, he may retain in his hands assets proportioned to the amount of the claim, which assets shall be liable to other claims, or to be delivered up or distributed in case the claim be not established; and if on any claims exhibited and disputed as aforesaid the creditor or claimant shall not, within nine months after such dispute or rejection, commence a suit for recovery the creditor shall be forever barred; and the executor or administrator may plead this section in bar, together with the general issue or other plea proper to bring the merits of the cause to trial; and on any dividend to be made nine months after such dispute or rejection and failure to bring suit the executor or administrator may proceed to pay or distribute as if he had not knowledge or notice of such claim or as if it did not exist; but if the claim be put in suit within the nine months it may be ascertained by verdict or otherwise, and the court shall proceed as herein directed, regard being had to the rules herein laid down as to the notice to be given by the executor or administrator and distribution or payment be made after such notice.

Act of Maryland of 1798, ch. 101, subch. 8, sec. 18; Comp. Stat. D. C. p. 25, sec. 104.

National Svgs. & Tr. Co. v. Ryan, 49 App. D. C. 159 (1919); 48 W. L. R. 22.
Berry & Whitmore v. Dante, 43 App. D. C. 110 (see sec. 336).

Trust Co. v. Darling, 21 App. D. C. 132 (1903); 31 W. L. R. 129.

Patten v. Glover, 1 App. D. C. 466 (1893); 21 W. L. R. 794, affirmed in 165 U. S. 394.

SEC. 349. CLAIMS MADE AFTER DISTRIBUTION.—In case all the assets have been paid away, delivered, or distributed as herein directed, and a claim shall afterwards be exhibited of which the executor or administrator hath not knowledge or notice by the exhibition of the claim legally authenticated, as herein required, he shall not be answerable for the same; and if he be sued for any claim and shall make it appear to the court in which suit is brought that he hath so paid away, delivered, or distributed, and the plaintiff can not prove that the defendant had notice as aforesaid before such payment, delivery, or distribution, the court shall not proceed to give judgment (although the amount of the claim against the deceased may be ascertained) until the plaintiff shall be able to show further assets coming into the defendant's hands, but if the plaintiff shall prove notice, as aforesaid, of the said claim against the defendant, judgment may be immediately given for such sum as the plaintiff ought to have re-

ceived at the dividend, and fieri facias may issue and have effect, and further judgment may be given on coming in of further assets.

Act of Maryland of 1798, ch. 101, subch. 8, sec. 15; Comp. Stat. D. C. p. 24, sec. 101.

SEC. 350. NOTICE TO CREDITORS TO FILE CLAIMS.—No executor or administrator who shall, after the lapse of one year after the date of his letters, have paid away assets to the discharge of just claims shall be answerable for any claim of which he had no knowledge or notice by an exhibition of the claim legally authenticated: *Provided*, That at least six months before he shall make distribution he shall have caused to be inserted in so many newspapers as the probate court may direct an advertisement as follows, or fully to the following effect, namely: "This is to give notice that the subscriber, of -----, hath obtained from the probate court of the District of Columbia letters testamentary (or of administration) on the personal estate of -----, late of -----, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the ----- day of ----- next; they may otherwise by law be excluded from all benefit of said estate.

"Given under my hand this ----- day of -----."

Act of Maryland of 1798, ch. 101, subch. 8, sec. 13; Comp. Stat. D. C., p. 24, sec. 99.

As to what constitutes sufficient notice, see *Parish v. Hedges*, 34 App. D. C. 21 (1909); 37 W. L. R. 752.

SEC. 351. REPORT AND PROOF OF NOTICE.—The executor or administrator may report to the court, with an affidavit of the proof thereof annexed, the fact of having given such notice, and the court, on being satisfied that *its* order has been complied with and the said notice has been given, shall indorse on said report *its* certificate that it has been proven to *its* satisfaction that said notice hath been given as therein reported, and shall order said report and certificate to be recorded among the records of the court.

Act of June 30, 1902 (32 Stat. L., p. 529).

SEC. 352. The said report and certificates shall be prima facie evidence, in all cases whatever, of the giving of such notice as therein stated.

SEC. 353. A copy of said report, certificate, and order, under the seal of the register of wills, shall be legal and competent evidence.

SEC. 354. DOCKET OF CLAIMS.—The register of wills shall enter in a suitable book, to be provided by him for that purpose, all claims against a decedent as they are regularly passed by the probate court, giving the date of the passage, the name of the creditor, the character of such claim, whether on note or open account, bond, bill, obligation, judgment, or other evidence of debt, and the amount thereof, and the entry of a claim upon such docket shall be taken as notice to the executor or administrator of its existence.

SEC. 355. The claim thus entered shall not afford any evidence as to the justice or correctness of any debt therein entered whenever the same shall be controverted by an executor or administrator in any suit instituted for the recovery of such debt; nor shall the same be construed to take any debt out of the operation of a plea of limitations.

SEC. 356. PRIORITIES.—In paying the debts of a decedent, after the payment of funeral expenses according to the condition and circumstances of the deceased, not exceeding six hundred dollars, an executor or administrator shall observe the following rules: Claims for rent in arrear against deceased persons, for which an attachment might be levied by law, shall have preference. Judgments and decrees of courts in the District of Columbia shall next be wholly discharged. After such claims for rent, judgments, and decrees shall be satisfied, all other just claims shall be on an equal footing without priority or preference. If there be not sufficient to discharge all such judgments and decrees, a proportionate dividend shall be made between the judgment and decree creditors.

Act of Maryland of 1798, ch. 101, subch. 8, sec. 17; Comp. Stat. D. C., p. 25, sec. 103.

See opinion of William Clark Taylor, Esq., special master, in re estate of Hermine J. Herbert, Admr., No. 27951, probate court, holding husband personally liable for funeral expenses of wife who dies intestate.

As to allowance for monument, see *Sinnott v. Kenaday*, 14 App. D. C. 1 (1899); 27 W. L. R. 82; reversed on other grounds, 179 U. S. 606.

Judgment of municipal court not docketed in supreme court is not entitled to preference. *McCoy, C. J.*, in *Neuland estate*, 44 W. L. R. 378 (1916).

See sec. 3456 R. S. U. S., giving priority to debts due the United States.

SEC. 357.—NO CLAIMS TO BE NOTICED UNLESS LEGALLY AUTHENTICATED.—No executor or administrator shall be bound to discharge any claim against his decedent unless the same shall be exhibited to him, legally authenticated, or unless such claim shall have been passed by the probate court and entered by the register of wills upon his docket.

SEC. 358. MEETING OF CREDITORS.—Any executor or administrator shall be entitled to appoint a meeting of creditors on some day by the court approved, and passage of claims, payment, or distribution may be there made under the court's direction and control.

SEC. 359. DISTRIBUTION OF RESIDUE.—Whenever it shall appear by the first or other account of an executor or administrator that all the claims against, or debts of, the decedent which have been known by or notified to him have been discharged or allowed for in his account, it shall be his duty to deliver up and distribute the surplus or residue of the personal estate not disposed of by any will, as hereinafter directed: *Provided*, That his power and duty with respect to future assets shall not cease; and after such delivery he shall not be liable for any debts afterwards notified to him, provided he shall have advertised as hereinbefore directed, unless assets shall afterwards come into his hands which shall be answerable for such debts.

Act of Maryland of 1798, ch. 101, subch. 10, sec. 6; Comp. Stat. D. C., p. 30, sec. 130.

SEC. 360. SUITS ON BONDS AGAINST HEIRS.—No creditor by a bond which purports to bind the heirs of the obligor shall be entitled to sue the heirs at common law in respect of assets descended to them, but debts by specialty and by simple contract, without distinction, shall be payable primarily out of the personal estate, and, if that be insufficient, shall be payable equally and without preference out of the proceeds of the real estate.

SUBCHAPTER SEVEN

ACCOUNTS

SEC. 361. FIRST ACCOUNT WITHIN TWELVE MONTHS.—Every executor and administrator shall render to the probate court within the period of twelve months from the date of his letters the first account of his administration.

Humphrey v. Conger, 7 App. D. C. 23 (1895) ; 23 W. L. R. 425.

SEC. 362. SUBSEQUENT ACCOUNTS.—If the first account shall not show the estate which was on hand to be fully administered, other accounts shall be rendered from time to time until the estate is fully administered under such rules as the supreme court of the District may establish.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 529), repealing 31 Stat. L. p. 1189. Act of Maryland of 1798, ch. 101, subch. 10, sec. 3; Comp. Stat. D. C., p. 30, sec. 127.

SEC. 363. FAILURE TO ACCOUNT.—If an executor or administrator shall fail to return an account within the time limited by law or fixed by the rules of court, or within such further time as the probate court shall allow, his letters, on application of any person interested, may be revoked and administration granted at the discretion of the court.

See section 119.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 529), repealing 31 Stat. L. p. 1189. Act of Maryland of 1798, ch. 101, subch. 10, sec. 9; Comp. Stat. D. C., p. 31, sec. 133.

Humphrey v. Conger, 7 App. D. C. 23 (1895) ; 23 W. L. R. 425.

McLane v. Cropper, 5 App. D. C. 276 (1895) ; 23 W. L. R. 115.

SEC. 364. ASSETS TO BE CHARGED.—In such account shall be stated, on one side, the assets which have come to his hands, according to the inventory or inventories returned to the court or received and appraised as herein directed, after the inventory or inventories returned, and the sales made under the court's direction—that is to say, the inventory or inventories are to show the articles of the estate, and the sales the amount of their value, where they have been sold, and for articles so sold he shall be charged the price according to the return; and if any articles have been sold for credit and not yet paid for they shall be accounted for in a subsequent account, and all moneys received for debts due the decedent shall be included in said account.

Act of Maryland of 1798, ch. 101, subch. 10, sec. 1; Comp. Stat. D. C., p. 29, sec. 124.

McIntire v. McIntire, 14 App. D. C. 337 (1899) ; 27 W. L. R. 198, affirmed in 192 U. S. 116; 20 App. D. C. 134.

Charging executor with interest, *Mades v. Miller*, 2 App. D. C. 455 (1894) ; 22 W. L. R. 177.

As to dividends on stock specifically bequeathed, see *Nash v. Ober*, 2 App. D. C. 304 (1894) ; 22 W. L. R. 92.

SEC. 365. DISBURSEMENTS AND ALLOWANCES.—On the other side shall be stated the disbursements by him made, namely: First. Funeral expenses, to be allowed at the discretion of the court, according to the condition and circumstances of the deceased, not

exceeding *three hundred dollars: Provided, That for special cause shown the court may make such additional allowance not exceeding three hundred dollars as such special circumstances may warrant.* Second. The debts of the deceased proved or passed as herein directed, and paid or retained. Third. The allowance for things lost, or which have perished without the party's fault, which allowance shall be according to the appraisement. Fourth. His commissions, which shall be at the discretion of the court, not under one per centum nor exceeding ten per centum on the amount of the inventory or inventories, excluding what is lost or perished. Fifth. His allowance for costs, attorneys' fees, and extraordinary expenses which the court may think proper to allow.

32 Stat. L., part 1, page 529, adding proviso to item first.

Act of Maryland of 1798, ch. 101, subch. 10, sec. 2; Comp. Stat. D. C., p. 29, sec. 125.

See section 303 and cases cited, relative to commission; see also section 119 as to allowance of attorneys' fees.

"An executor, prior to final settlement of the estate, or the termination of his services in connection with the estate, is not entitled to an allowance of commissions." *Brosnan v. Fox*, 52 App. D. C. 143 (1922); 50 W. L. R. 760. This section "places a limitation beyond which the court may not go in allowing compensation for the services of an executor or administrator, or executors or administrators, in administering an entire estate." *Ib.* "In the case of succession the court must make only such allowances * * * to the succeeding executors or administrators within the limitation fixed by the statute." *Ib.* The court has power to compensate an executor for defending the validity of a contested will, which is finally adjudicated void. *Ib.*, citing, with approval, *Hutchins v. Hutchins*, 48 App. D. C. 286 (1919); 47 W. L. R. 18.

SEC. 366. BEQUESTS TO EXECUTORS.—If anything be bequeathed to an executor by way of compensation, no allowance of commission shall be made unless the said compensation shall appear to the court to be insufficient; and if so, it shall be reckoned in the commission to be allowed by the court.

Act of Maryland of 1798, ch. 101, subch. 14, sec. 5; Comp. Stat. D. C., p. 30, sec. 126.

See section 303 and cases cited as to allowance of commission.

[SEC. 367. LIST OF DEBTS.—Every executor or administrator may within one year after the date of his letters, return to the probate court a list of the debts due from his decedent which may be made known to him, stating the principal and the time at which interest is to commence on each respective debt, to which list of debts shall be annexed the oath of the administrator that the same is a correct list of the debts due from his decedent so far as the said debts have come to his knowledge; and every six months thereafter until the estate may be finally settled a similar return may be made of such debts as shall come to the knowledge of the executor or administrator within that period, which list of debts shall be recorded by the register of wills, and a copy thereof, certified under the hand of the register of wills and the seal of his office, shall be prima facie evidence of the amount of debts due by the decedent in any court where the administrator alleges that he has not assets sufficient to discharge the claim in controversy or any part thereof.]

Repealed by act of June 30, 1902 (32 Stat. L. pt. 1, p. 530).

[SEC. 368. Such lists shall not afford any evidence of the justice or correctness of any claim therein when controverted by the executor or administrator in any suit instituted for the recovery of such debt, nor shall the same be construed to take any debt out of the operation of any plea of limitation.]

Repealed by act of June 30, 1902 (32 Stat. L. pt. 1, p. 530).

SEC. 369. INVESTMENT OF FUNDS.—Whenever, under the provisions of a will, it shall be necessary for an executor or an administrator cum testamento annexo to retain in his hands the personal estate or

any part thereof after all just claims are discharged, as where money or some other thing is directed to be paid at a distant period or upon a contingency, the probate court shall have the power, on the application of such executor or administrator or of a party interested, to decree or give directions in relation thereto; and it shall be the duty of said executor or administrator to apply to the said probate court, and the said court shall have full power to decree or direct what part of the personal estate shall be retained or appropriated for the purpose and in what manner it shall be disposed of, and the legacy or benefit intended by the will shall be secured to the person to be entitled at a future period or contingency, and how the necessary part of the personal estate to be appropriated for the purpose shall be prevented from lying dead or being unproductive, and how it shall be applied, agreeably to the intent of the will or the construction of law, in case the contingency shall not take place.

Act of Maryland of 1798, ch. 101, subch. 10, sec. 11; Comp. Stat. D. C., p. 31, sec. 135.

See section 123, and cases cited.

Under a bequest of the income of a fund to a life tenant, with remainder over, it is the duty of the executor to invest the fund, pay the income to the person entitled for life, and preserve the principal for the remainderman. *Payne v. Robinson*, 26 App. D. C. 283 (1905); 33 W. L. R. 825.

"The executor does not cease to be executor because the period of administration, so called, may be passed. He is still executor as long as he has anything under the will to execute." *Marfield v. McCurdy*, 25 App. D. C. 342 (1905); 33 W. L. R. 450. "The principal difference between an executor during the period of administration and an executor after the lapse of the period of administration is that the former is responsible to the probate court for the faithful execution of his trust, the latter to a court of equity." *Ib.*

SEC. 370. EXECUTOR OF DECEASED EXECUTOR, AND SO FORTH.—The executor or administrator of a deceased executor or administrator who shall die before an account of his administration hath been rendered shall render an account showing the amount of the assets received and the payments made by his decedent, and the account shall, if found by the court to be correct, be admitted to record as other administration accounts.

SEC. 371. ACCOUNTS OF DECEASED EXECUTRIX, AND SO FORTH.—The husband of an executrix or administratrix who shall die before a final account of her administration shall have been settled shall render such account, if required by the court, showing thereby the amount of money and property received and of payments and disbursements made by such executrix or administratrix, or that may have been received or paid by him, and not before accounted for with the court; and the account so rendered shall, if found by the court to be correct, be admitted to record as other administration accounts in cases where the executrix or administratrix rendered them in person; and in case of refusal of the husband to render such account, the court may proceed against him by attachment, and may commit him until he shall render such account.

SEC. 372. LOST PROPERTY.—The probate court shall have power to make allowance to any executor, administrator, or collector for property of the decedent which hath perished or been lost without the fault of the party; and no profit shall be made and no loss sustained by an executor or administrator in the increase or decrease of the

estate under his management; but he shall return an inventory and account for such increase, and may be allowed for such decrease on the settlement of the final or other account.

SUBCHAPTER EIGHT

DISTRIBUTION TO NEXT OF KIN AND LEGATEES

SEC. 373. PARTIES ENTITLED.—When the debts of an intestate, exhibited and proved or notified and not barred, shall have been discharged or settled, or allowed to be retained for as herein directed, the administrator shall proceed to make distribution of the surplus as follows:

See section 1173 re interest of widow who renounces under will.

Act of Maryland of 1798, ch. 101, subch. 11, secs. 1 et seq.; Comp. Stat. D. C., p. 32, secs. 136 et seq.

"An executor or administrator may make distribution of the surplus in his hands, after discharging the debts of the estate, without waiting for an order of the probate court." *Miller-Shoemaker Co. v. Sturgeon*, 31 App. D. C. 406 (1908); 36 W. L. R. 350.

As to distribution of property of persons dying in common disaster, see *Y. W. C. A. v. French*, 187 U. S. 401 (1903), reversing 18 App. D. C. 9; 29 W. L. R. 171.

"It is not the full and complete administration of the estate that marks the period for distribution, but the payment of or allowance for all debts and claims made known against the estate, after notice given, and when that is done it at once becomes the duty of the administrator to deliver up and distribute the residue of the estate to those entitled thereto." *Sterrett v. Trust Co.*, 10 App. D. C. 131 (1897); 25 W. L. R. 139, construing section 10 of subchapter 10 of the testamentary act of Maryland of 1798.

SEC. 374. If the intestate leave a widow or surviving husband and no child, parent, grandchild, brother or sister, or the child of a brother or sister of the said intestate, the said widow or surviving husband shall be entitled to the whole.

Act of April 19, 1920 (41 Stat. L. pt. 1, p. 563), repealing 31 Stat. L. p. 1189.

SEC. 375. If there be a widow or surviving husband and a child or children, or a descendant or descendants from a child, the widow or surviving husband shall have one-third only.

Act of April 19, 1920 (41 Stat. L. pt. 1, p. 563), repealing 31 Stat. L. p. 1189.

SEC. 376. If there be a widow or surviving husband and no child or descendants of the intestate, but the said intestate shall leave a father or mother, or brother or sister, or child of a brother or sister, the widow or surviving husband shall have one-half.

Act of April 19, 1920 (41 Stat. L. pt. 1, p. 563), repealing 31 Stat. L. p. 1189.

SEC. 377. The surplus, exclusive of the widow's or surviving husband's share, or the whole surplus (if there be no widow or surviving husband), shall go as follows:

Act of April 19, 1920 (41 Stat. L. pt. 1, p. 563), repealing 31 Stat. L. p. 1189.

SEC. 378. If there be children and no other descendants, the surplus shall be divided equally among them.

SEC. 379. If there be a child or children and a child or children of a deceased child, the child or children of such deceased child shall take such share as his, her, or their deceased parent would, if living,

be entitled to, and every other descendant or descendants in existence at the death of the intestate shall stand in the place of his, her, or their deceased ancestor: *Provided*, That if any child or descendant shall have been advanced by the intestate, by settlement or portion, the same shall be reckoned in the surplus, and, if it be equal or superior to a share, such child or descendant shall be excluded, but the widow shall have no advantage by bringing such advancement into reckoning: *And provided further*, That, if any child or descendant shall have received from the intestate any real estate by way of advancement, which shall not be equalized under the provisions of section nine hundred and fifty-nine of this code, the value of any such advancement shall be treated as *personalty* for the purposes of this section; but maintenance or education or money or realty, given without a view to a portion or settlement in life, shall not be deemed advancement; and in all cases those in equal degree claiming in the place of an ancestor shall take equal shares.

32 Stat. L. 1, p. 530.

See section 959.

Act of Maryland of 1798, ch. 101, subch. 11, sec. 6; Comp. Stat. D. C. p. 32, sec. 141.

As to ademption of bequest, see *Miller v. Payne*, 28 App. D. C. 396 (1906); 34 W. L. R. 794.

As to satisfaction of indebtedness by bequest, see *Patten v. Glover*, 1 App. D. C. 466 (1893); 21 W. L. R. 796; affirmed 165 U. S. 394.

SEC. 380. If there be a father and no child or descendant, the father shall have the whole; and if there be a mother and no father, child, or descendant, the mother shall have the whole.

SEC. 381. If there be a brother or sister, or child or descendant of a brother or sister, and no child, descendant, or father or mother of the intestate, the said brother, sister, or child or descendant of a brother or sister shall have the whole.

SEC. 382. Every brother and sister of the intestate shall be entitled to an equal share, and the child or children, or descendants of a brother or sister of the intestate, shall stand in the place of their deceased parents, respectively.

Act of Maryland of 1798, ch. 101, subch. 11, sec. 9; Comp. Stat. D. C. p. 33, sec. 144.

McIntire v. McIntire, 192 U. S. 116 (1904) affirming 20 App. D. C. 134.

Iglehart v. Holt, 12 App. D. C. 68 (1898); 26 W. L. R. 3.

SEC. 383. After children, descendants, father, mother, brothers, and sisters of the deceased and their descendants, all collateral relations in equal degree shall take, and no representation among such collaterals shall be allowed.

32 Stat. L. pt. 1, p. 530.

Act of Maryland of 1798, ch. 101, subch. 11, sec. 11; Comp. Stat. D. C. p. 33, sec. 146.

Iglehart v. Holt, 12 App. D. C. 68; 26 W. L. R. 3.

SEC. 384. If there be no collaterals, a grandfather may take, and if there be two grandfathers they shall take alike; and a grandmother, in case of the death of her husband, the grandfather, shall take as he might have done.

SEC. 385. If any person entitled to distribution shall die before the same shall be made, his or her share shall go to his or her representatives.

SEC. 386. Posthumous children of intestates shall take in the same manner as if they had been born before the decease of the intestate, but no other posthumous relation shall be considered as entitled to distribution in his or her own right.

Act of Maryland of 1798, ch. 101, subch. 11, sec. 14; Comp. Stat. D. C., p. 33, sec. 149.

"A child en ventre su mare is deemed to be in esse for the purpose of taking a remainder, or any other estate or interest which is for his benefit, whether by descent, by devise, or under the statute of distribution." *Craig v. Rowland*, 10 App. D. C. 402 (1897); 25 W. L. R. 235.

SEC. 386a. In the distribution of personal estate there shall be no distinction between the whole and half blood.

Interpolated by Act of June 30, 1902 (32 Stat. L., pt. 1, p. 530).

SEC. 387. The illegitimate child or children of any female and the issue of any such illegitimate child or children shall be capable to take from their mother, or from each other, or from the descendants of each other, in like manner as if born in lawful wedlock. When an illegitimate child or children shall die leaving no descendants, or brothers or sisters, or the descendants of such brothers or sisters, then and in that case the mother of such illegitimate child or children, if living, shall be entitled as next of kin, and if the mother be dead the next of kin of the mother shall take in like manner as if such illegitimate child or children had been born in lawful wedlock.

See section 958.

"It was evidently the intent of Congress in enacting this statute to remove the common-law disability of inheritance through the maternal line, and to that extent places illegitimates upon the same basis as legitimates. This amounted to a declaration of public policy." *Railway Co. v. Hawkins*, 35 App. D. C. 313 (1910); 38 W. L. R. 425. "The mother of illegitimate children may be their next of kin, and illegitimate children of any female are next of kin to each other," and the phrase "next of kin" in section 1301 of the code is used in the same sense. *Ib.*

SEC. 388. If there be no widow or relations of the intestate within the fifth degree, which shall be reckoned by counting down from the common ancestor to the more remote, the whole surplus shall belong to the District of Columbia, to be disbursed by the Commissioners of the District for the benefit of the poor.

See section 962.

Act of Maryland of 1798, ch. 101, subch. 11, sec. 15; Comp. Stat. D. C., p. 34, sec. 150.

Tucker v. Nebeker, 2 App. D. C. 326 (1894); 22 W. L. R. 143.

SEC. 389. DISTRIBUTION OF SPECIFIC PROPERTY.—In case the surplus remaining in the administrator's hands after payment of all just debts exhibited and proved or notified and not barred, or after retaining for the same, shall consist of specific property or articles mentioned in the inventory or inventories, the administrator, if he can not satisfy the parties, may apply to the court to make distribution, and the court may appoint a day for making distribution and by summons call on the said parties to appear; and the said court may, at the appointed time, proceed to distribute. But if a majority in point of value shall neglect to appear, or appearing shall object to the distribution of the articles, or if the court shall deem a sale of the said articles or any part of them more advantageous, a sale shall be directed accordingly, and the rules herein laid down relative to a sale by order of the said court shall be observed.

See sections 322, et seq., and cases there cited.

Act of Maryland of 1798, ch. 101, subch. 11, sec. 16, Comp. Stat. D. C., p. 35, sec. 155.

SEC. 390. Whenever a distribution of specific articles is to be made the probate court may appoint two disinterested persons, not in any way related to the parties concerned, to make such distribution among the persons entitled as to them shall seem meet and proper; or if, in their opinion, upon a view of such articles, no distribution among the persons entitled could be by them made which would operate equally, but a sale thereof would be more advantageous to such persons, they shall return to the probate court their opinion in writing, and the court shall thereupon order a sale of such articles, upon reasonable notice, and cause the proceeds of such sale to be equally distributed among the parties entitled.

SEC. 391. PARTIAL DISTRIBUTION.—When any person entitled, after payment of debts, shall be in want of subsistence or greatly straitened in his circumstances, and shall apply to the probate court by petition, and satisfy the court that he is in want of subsistence or greatly straitened in circumstances, and that it probably will not require more than one-half of the assets to discharge the debts, the court may direct the administrator to deliver to the petitioner any part of what the court shall suppose will be his distributive share, or any part of a legacy or bequest in money not exceeding one-third part, the said petitioner giving bond, with security approved by the court, to the administrator for returning the same or an equivalent, with interest, whenever so directed by the court; and the court shall have power to determine in a summary way on any such petition, after summons against such administrator duly returned “summoned” or “non est.”

Act of Maryland of 1798, ch. 101, subch. 10, sec. 7; Comp. Stat. D. C., p. 30, sec. 131.

Collector may be authorized to make partial distribution under section 391. *Hutchins v. Hutchins*, 41 App. D. C. 122 (1913); 42 W. L. R. 4. “Section 391 authorizes the court to deliver any part of what the court shall suppose will be the distributive share,” and the requirement of a bond is sufficient protection in the event that the beneficiary should subsequently be divested of her interest in the estate. *Id.*

This section confers no jurisdiction on an equity court to order partial distribution of a fund administered by a trustee under its supervision. *Hutchins v. Dante*, 40 App. D. C. 262 (1913); 41 W. L. R. 226.

Sinnott v. Kenaday, 12 App. D. C. 115 (1898); 26 W. L. R. 121, citing *McLane v. Cropper*, 5 App. D. C. 276; 23 W. L. R. 115.

Sterrett v. Trust Co., 10 App. D. C. 131 (1897); 25 W. L. R. 139.

SEC. 392. SPECIFIC BEQUESTS.—And the court, in like manner, on any petition by a person in such circumstances to whom a specific legacy or bequest has been made, being satisfied that the assets, exclusive of all specific legacies, will not be nearly exhausted by debts, may direct the executor or administrator with the will annexed to deliver to the petitioner the said specific legacy or bequest on his giving bond as aforesaid.

Act of Maryland of 1798, ch. 101, subch. 10, sec. 8; Comp. Stat. D. C., p. 31, sec. 132.

SEC. 393. BEQUEST TO FEMALE.—Where a bequest of personal property or money is made to a female and directed by the will to be paid on her attaining to full, mature, or to a lawful age, such female shall be entitled to receive and demand such personal property or money on her arriving at the age of eighteen years or being married.

See section 1140.

Under a will directing the payment of income from an estate to a female "when she shall reach the age of eighteen years," she is entitled to receive it on attaining that age, and it should not be paid to her guardian. *Perin v. Perin*, 41 W. L. R. 265 (Supreme Court, D. C.).

SEC. 394. MEETING OF LEGATEES OR NEXT OF KIN.—Any administrator shall be entitled to appoint a meeting of persons entitled to distributive shares or legacies or a residue, on some day by the court approved, and payment or distribution may be there made under the court's direction and control.

Act of Maryland of 1798, ch. 101, subch. 14, sec. 12; Comp. Stat. D. C., p. 35, sec. 156.

"Ordinarily it would be safer for an administrator to pursue the course pointed out by this latter section (sec. 394), but there is no express command of the law that he should do so." *Miller-Shoemaker Co. v. Sturgeon*, 31 App. D. C. 406 (1908). (See sec. 373.)

"This provision merely gives expression to the well-settled rule that a legacy is payable in cash, unless some other form of payment is authorized by the person entitled. In the present case the distributee was a nonresident, and the executors, waiving their right to make payment here under the direction of the court, assumed the risk of sending the money by check to California. To absolve themselves from responsibility to the distributee, it must appear that he expressly or impliedly authorized them so to act, and, unless he did, in contemplation of law the money still is in their hands and they must respond to the order of the court" directing them to pay it. In this case the check was received and cashed by an impostor, and the executors were directed to pay the legatee his distributive share. *Moore v. Moore*, 47 App. D. C. 23 (1917); 45 W. L. R. 779.

CHAPTER SIX

ADOPTION OF CHILDREN

SEC. 395. Jurisdiction is hereby conferred on any judge of the supreme court of the District of Columbia to hear and determine any petition that may be presented by a person or a husband and wife residing in the District of Columbia, praying the privilege of adopting any minor child as his or her or their own child, and making such minor child an heir at law. If the judge shall find, upon the hearing of such petition, that the petitioner is a proper person to have custody of such child, and that the parent or parents or guardian of such child have given their permission for such adoption, he shall enter an order upon the records of the court legalizing such adoption and making such child an heir at law of such petitioner, the same as if such child was born to such petitioner. If the child has no parent or guardian the judge shall appoint a guardian ad litem.

Act of February 26, 1895 (28 Stat. L., p. 687).

CHAPTER SEVEN

ALIENS

SEC. 396. REAL ESTATE.—It shall be unlawful for any person not a citizen of the United States or who has not lawfully declared his intention to become such citizen, or for any corporation not created by or under the laws of the United States or of some State or Territory of the United States, to hereafter acquire and own real estate, or any interest therein, in the District of Columbia, except such as may be acquired by inheritance: *Provided*, That the prohibition of this section shall not apply to cases in which the right to hold and dispose of lands in the United States is secured by existing treaties to the citizens or subjects of foreign countries, which rights, so far as they exist by force of any such treaties, shall continue to exist so long as such treaties are in force, and no longer, and shall not apply to the ownership of foreign legations or the ownership of residences by representatives of foreign governments or attachés thereof.

See sections 261, 960.

24 Stat. L. 476, act of March 3, 1887.

29 Stat. L. 618, act of March 2, 1897.

33 Stat. L. 733, act of February 23, 1905.

Cohen v. Cohen, 47 App. D. C. 129 (1917) ; 45 W. L. R. 802.

SEC. 397. CORPORATIONS.—No corporation or association of which *over fifty* per centum of the stock is or may be owned by any person or persons, corporation or corporations, association or associations not citizens of the United States shall hereafter acquire or own any real estate hereafter acquired in the District of Columbia.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 530).

See citations under section 396.

SEC. 398. FORFEITURE.—All property acquired or held or owned in violation of the provisions of this chapter shall be forfeited to the United States, and it shall be the duty of the United States attorney for the District to enforce every such forfeiture by bill in equity or other proper process. And in every such suit or proceeding that may be commenced to enforce the provisions of this chapter it shall be the duty of the court to determine the very right of the matter, without regard to matters of form, joinder of parties, multifariousness, or other matters not affecting the substantial rights either of the United States or of the other parties concerned.

See citations under section 396.

CHAPTER EIGHT

AMENDMENTS

SEC. 399. In all judicial proceedings the court, justice or judge, in which, or before whom, the cause shall be pending shall have power upon such terms as shall seem best, at any stage of the case, to allow amendments of writs, pleadings, or other papers in the cause and to allow supplemental or substituted affidavits to be filed.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 530), repealing 31 Stat. L., pt. 1, p. 1189.

See section 1535b.

See also section 274a, Judicial Code (38 Stat. L., pt. 1, p. 956), construed in *D. C. v. Terminal Co.*, 47 App. D. C. 570 (1918).

"After the appearance of defendant, the granting of additional time to plead and leave to amend affidavits was within the discretion of the court." *Armour v. Flook*, 44 App. D. C. 415 (1916); 44 W. L. R. 120.

In an action in ejectment, where the defense was the general issue, it is not error to permit defendant to amend by pleading the statute of limitations (after the evidence has been introduced and a motion by plaintiff for a directed verdict has been overruled). "Plaintiff was not taken by surprise; no additional evidence was introduced; plaintiff sustained no possible legal injury." *McMillan v. Fuller*, 41 App. D. C. 384 (1914); 42 W. L. R. 51.

Slye v. Guerdum, 29 App. D. C. 550 (1907); 35 W. L. R. 340.

Quaere: Whether section 399 modifies common-law rule that "the finding in favor of the plaintiff of an issue of fact raised by a plea in abatement, entitles the plaintiff to a judgment on the merits." *Brown v. Savings Bank*, 28 App. D. C. 351 (1906); 34 W. L. R. 800.

Where a declaration is filed within the period of the statute of limitations, an amendment made after the statute has run which charges the same cause of action in a different form is not open to the defense of the statute. *Beasley v. B. & O. R. Co.*, 27 App. D. C. 595 (1906); 34 W. L. R. 430. (See also *D. C. v. Frazer*, 21 App. D. C. 154 (1903); 31 W. L. R. 83.)

Kellogg v. Insurance Co., 25 App. D. C. 36 (1905); 33 W. L. R. 103.

"The grant or refusal of leave to amend is a power entrusted to the trial court that injustice and hardship may be prevented and the merits of the case fairly tried. Whether in the particular instance the leave should be granted or refused is a matter within the discretion of the trial court, and is not reviewable in the appellate court." *Chunn v. Railway Co.*, 23 App. D. C. 551 32 W. L. R. 344, reversed on other grounds, 207 U. S. 302 (1904), citing *German Soc. v. Cemetery*, 2 App. D. C. 310; *Brown v. B. & O. R. Co.*, 6 App. D. C. 237. "That the amendment may relate to the withdrawal of a plea in bar and its substitution by one in abatement, or the reverse, does not alter the rule." *Ib.*

"There is nothing in section 399 of the code to make it mandatory on the courts to allow amendments." *Schrot v. Schoenfeld*, 23 App. D. C. 421 (1904); 32 W. L. R. 230.

Although this section should be liberally construed, a suit begun in the name of a deceased plaintiff is a nullity (and this is true, although the plaintiff is merely a formal, nominal, use plaintiff); hence there can be no amendment substituting the administrator of the deceased plaintiff as party plaintiff. *Karrick v. Wetmore*, 22 App. D. C. 487 (1903); 31 W. L. R. 714. For the further history of this litigation, see 25 App. D. C. 415 (1905); 26 App. D. C. 124 (1905), 205 U. S. 141.

"In the case of *Ferry Co. v. Railroad Co.*, 142 U. S. 396, it was held by the Supreme Court that where the facts showed that the plaintiff had an equitable

title to relief, but that court, on the state of pleadings before it, was unable to afford relief it could and would remand the case to the court below for amendment of pleadings and further proceedings, in order that the right might be availed of. *Wagenhurst v. Wineland*, 22 App. D. C. 356 (1903) ; 31 W. L. R. 521. (See also *Brick Co. v. Atkinson*, 16 App. D. C. 462 (1900) ; 28 W. L. R. 503.)

Clark v. Barber, 21 App. D. C. 274 (1903) ; 31 W. L. R. 94.

Ex parte Mansfield, 11 App. D. C. 558 (1897) ; 25 W. L. R. 783.

As to right to amend from one form of action to another, see *Magruder v. Belt*, 7 App. D. C. 303 (1895) ; 23 W. L. R. 827.

"The power of amendment is equally applicable and to the same extent in the case of a *scire facias* as in the case of an ordinary execution." *Otterbach v. Patch*, 5 App. D. C. 69 (1894) ; 22 W. L. R. 833.

SEC. 400. CONTINUANCE.—No such amendment shall entitle either party, as of course, to a postponement of the trial or to a continuance of the case to the next term of the court; but the court shall allow a postponement or continuance in case the ends of justice require it, and upon such terms as the court shall deem proper. If such amendment is ordered and a postponement or continuance is allowed after the jury have been sworn the jury shall be discharged.

Act of Maryland of 1785, ch. 80, sec. 4; Comp. Stat. D. C. p. 460, sec. 87; sec. 954, R. S. U. S.

A discontinuance of a count in a declaration setting up a distinct cause of action is not an amendment, but treating it as such, it creates no necessity for a continuance. *Crandall v. Lynch*, 20 App. D. C. 73 (1902) ; 30 W. L. R. 326.

SEC. 401. COSTS.—In all cases of amendment such costs shall be allowed the party against whom the amendment is made as the court may determine.

CHAPTER NINE

APPRENTICES

SEC. 402. BY WHOM BOUND.—A minor child may be bound as an apprentice by his guardian; or, if none, by his father; or, if neither father nor guardian, by his mother, with the consent, entered of record, of the probate court, or without such consent if the minor, being fourteen years of age, agree in writing to be so bound; or by the probate court as hereinafter provided.

See sections 166, 173.

SEC. 403. TERM.—The utmost term of any apprenticeship shall be until the apprentice attains the age of twenty-one if a boy, or eighteen years if a girl.

SEC. 404. CONTRACT.—The writing by which such minor is bound as apprentice shall specify his age and what art, trade, or business he is to be taught. The master shall be bound to teach the same, and also to teach him reading, writing, and common arithmetic, and to supply him with suitable clothing and maintenance, and pay such amount, if any, as may be agreed upon for his services and expressed in the contract. The writing by which any minor is bound shall be filed in the office of the register of wills, and until it be so filed the master shall not be entitled to the services of said apprentice.

SEC. 405. COMPLAINTS.—The probate court, during the term of any apprenticeship, may hear complaint of the apprentice, indentured child, or anyone in his behalf, against the master or person to whom indentured, for undeserved or excessive correction, want of instruction, insufficient allowance of food, clothing, or lodging, or nonpayment of what was agreed to be paid; or the complaint of the master or person to whom indentured against the apprentice or indentured child for desertion or other misconduct; and, after reasonable notice of the complaint to the party against whom it is made, may determine the matter in a summary way and discharge either party from the contract of apprenticeship, or make such order as the case may require.

SEC. 406. REMOVAL OF APPRENTICE.—No master of an apprentice shall send or carry his apprentice out of the District, except in the case of mariners; and the said probate court, on being credibly informed that any master designs so to remove his apprentice, may require him to give bond conditioned against such removal, and on his refusal so to do may discharge the apprentice.

SEC. 407. ASSIGNMENTS.—The contract of apprenticeship, with the approbation of said court, may be assigned by the master, or, after his death, by his personal representatives, on such terms as the court may prescribe.

SEC. 408. CONCEALMENT.—If any person shall conceal, harbor, or facilitate the running away of an apprentice, he shall be liable to an

action therefor by the master, either in the said supreme court or before any justice of the peace, according to the amount of damages claimed.

SEC. 409. FORM OF CONTRACT.—The form of the contract of apprenticeship shall be the following, or to the same effect :

This indenture witnesseth, that it is mutually agreed between ----- and ----- that -----, a minor, aged ----- years shall be taken and held as an apprentice for the term of ----- years, by the said -----; and the said ----- contracts and covenants with the said ----- to faithfully and carefully instruct the said ----- in all the handicraft of a ----- (And the said ----- further contracts and covenants that the said minor shall be allowed, as compensation for his services, at the rate of -----).

Witness our hands and seals this ----- day of -----

----- [Seal.]
----- [Seal.]

Acknowledged before me, a notary public (or justice of the peace), this ----- day of -----

A B, Notary Public.

SEC. 410. TO WHOM MONEY TO BE PAID.—The money which the master is to pay shall be paid to the father or other party contracting with the master, or to the minor, in whole or in part, as said probate court may direct.

SEC. 411. JURISDICTION OF PROBATE COURT.—The probate court may bind out as an apprentice, or indenture to any proper person, any orphan child, any child abandoned by its parents or guardian, any child of habitually drunken, vicious, or unfit parents, when any such child as aforesaid shall not be in the care or custody of some person who is providing for its comfortable maintenance and education, and also any child habitually begging on the streets or from door to door, and any child kept in vicious or immoral associations. The terms of such apprenticeship or of such indenture shall be such in each case as the court may deem proper, having in view the future interests and welfare of the child.

See sections 166, 173.

CHAPTER TEN

ARBITRATION AND AWARD

SEC. 412. IN WHAT CASES.—By consent of the attorneys or solicitors on both sides, manifested by written stipulation, any common-law or admiralty or equity cause pending in the supreme court of the District of Columbia, except suits for divorce or nullity of marriage, or suits wherein *any party* to be affected by the result is an infant, idiot, or lunatic, may be referred for trial, upon the issues of law and fact therein involved, by an order of court, to some referee consented to by the parties or their counsel and named in the order.

32 Stat. L., pt. 1. p. 530.

See sections 145, 777.

Agreement to arbitrate as affecting right to sue. *Fontano v. Robbins*, 18 App. D. C. 402 (1901); 29 W. L. R. 527.

As to submission to arbitration without an order of court, see *Bailey v. D. C.*, 4 App. D. C. 356 (1894); 22 W. L. R. 735; *D. C. v. Bailey*, 171 U. S. 161 (1898), reversing 9 App. D. C. 360; 24 W. L. R. 745.

SEC. 413. OATH OF REFEREE.—The referee, before proceeding to hear the cause, shall be sworn faithfully and fairly to try the issues and determine the questions referred to him, as the case may require, and to make a just and true award thereof.

He shall thereupon fix a time for the hearing of said cause and notify all parties thereof.

SEC. 414. POWERS.—He shall have power to administer oaths, to cause subpoenas and subpoenas duces tecum to be issued to witnesses and to compel their attendance by attachment, and to punish a witness by fine and imprisonment for contempt of court, for nonattendance, or refusal to be sworn, or to testify. He shall have the same power to adjourn from time to time, and to preserve order in the trial or hearing before him, and to punish any violation thereof, as a court in regular session.

SEC. 415. DEPOSITIONS.—In suits in equity the referee shall have power to take depositions in cases where they are now taken before an examiner in chancery, and in all suits shall receive and consider all depositions and other evidence in like manner as where the trial or hearing is by the court. He may allow amendments to process or pleadings, pass interlocutory orders, award costs, and hear and determine all questions arising in the cause, with like effect as if done by order of the court.

SEC. 416. AWARD, WHEN TO BE FILED.—Within sixty days after the reference is made, unless a longer time is agreed upon by both parties or allowed by the court, the referee shall file with the clerk a written award and give notice thereof to each party interested; otherwise either party may notify the adverse party, or his attorney or solicitor, that he elects to end the reference, and the cause shall proceed as if no reference had been made.

SEC. 417. FORM OF AWARD.—The final award of the referee shall state separately the facts found by him and his conclusions of law, and direct the judgment or decree to be entered thereupon, including a determination as to costs, and in common-law cases the finding as to the facts shall have the effect of a verdict of a jury.

SEC. 418. SETTING ASIDE.—On motion filed within twenty days after notice of the filing of the award to the parties or their attorneys, the court may set aside his award because of corruption or misconduct of the referee, or because he exceeded his powers or so imperfectly executed them that a final award was not made, or may modify his award in case of an evident miscalculation of figures, or if it relates to matter not submitted, or is imperfect in form.

SEC. 419. JUDGMENT.—Judgment or decree, if no such motion is made, or it is overruled, or the award is only modified as aforesaid, shall thereupon be entered by the clerk as in the award directed, and shall stand as the judgment of the court.

SEC. 420. APPEALS IN EQUITY CAUSES.—An appeal may be taken to the court of appeals from such final decree in equity causes in like manner as from decrees rendered by the court.

SEC. 421. EXCEPTIONS.—Upon the trial of issues of fact in an action at law exceptions may be taken to the rulings of the referee upon the admissibility of evidence or upon questions of law arising during the hearing; and a refusal to make a finding upon a question of fact, upon sufficient evidence in law to sustain it, or making a finding of fact without sufficient evidence in law to sustain it, shall be deemed such a ruling upon a question of law.

SEC. 422. Such exceptions must be taken at the time the rulings excepted to are made, and must be reduced to writing by the exceptant, or they may be noted on the minutes of the referee and afterwards stated in a bill of exceptions, which shall be settled in the same manner as where the trial is by a jury, as directed by the rules of court, the referee exercising the same power therein as the trial justice in case of a jury trial.

SEC. 423. APPEALS IN COMMON-LAW CASES.—An appeal may be taken to the court of appeals from a final judgment in a common-law case, entered upon the award of the referee, in the same manner and with like effect as from a judgment rendered by the court on the verdict of a jury.

SEC. 424. RECORD.—The exceptions taken as aforesaid shall constitute a part of the record upon which an appeal from the judgment shall be heard. It shall not be necessary, however, to take exceptions to the conclusions of law appearing upon the face of the referee's award; but any error therein shall be considered on appeal as if presented in a formal bill of exceptions.

SEC. 425. FAILURE OF REFEREE TO ACT.—In case of the disability of the referee, or his failure or refusal to proceed with the reference, or his misconduct, the court which passed the order of reference may rescind the same.

SEC. 426. FEES.—The fees of the referee may be fixed by rule of court or agreement of the parties, and taxed as part of the costs of the cause.

SEC. 427. SEVERAL REFEREES.—The reference may be to more persons than one, provided they be an odd number of persons, in which

case all must meet together and hear all the allegations and proofs of the parties; but a majority may determine all questions submitted to or arising before them.

SEC. 428. DEATH OF PARTY.—If the death of either party shall happen pending the trial or hearing of a cause before a referee, the reference shall be at an end. If such death shall occur after the cause is submitted to the referee for final judgment or decree, the referee shall return his award, and thereupon the representative of such decedent may appear, or be required by the adverse party to appear, as provided in chapter two, and the cause thereupon be proceeded with as if such death had not occurred.

SEC. 429.—DEATH OF REFEREE.—If any referee shall die before making his award, the court shall, upon the consent of the parties or their counsel, appoint a referee, who shall have the same power to act as if originally appointed by mutual consent of the parties.

SEC. 430. COMMON-LAW REFERENCES.—Nothing herein contained shall prevent the court from referring a cause to an arbitrator, subject to the ratification of his award by the court, according to the course of the common law and the former practice of the court.

CHAPTER ELEVEN

ASSIGNMENT OF CHOSSES IN ACTION

SEC. 431. JUDGMENTS.—A judgment or money decree may be assigned in writing, and upon the assignment thereof being filed in the clerk's office the assignee may maintain an action or sue out a scire facias or execution on said judgment in his own name, as the original plaintiff might have done.

See section 331.

"A decree ordering the payment of a periodical allowance of alimony in the future is not assignable," although accrued alimony (under an order which it was beyond the power of the court in its discretion to modify or vacate) may be assigned. *Lynham v. Hufty*, 44 App. D. C. 589 (1916); 44 W. L. R. 229.

Where the rules require that judgment shall not be entered for four days after verdict, a judgment improperly entered by the clerk within that time is not absolutely void, and may be assigned. *Hutchinson v. Brown*, 8 App. D. C. 157 (1896); 24 W. L. R. 219.

SEC. 432. BONDS.—Any bond or obligation under seal for the payment of money may be assigned under the name and seal of the obligee therein named, and the assignee may maintain an action thereon in his own name.

Metropolitan Coach Co. v. Freund, 42 App. D. C. 283 (1914); 42 W. L. R. 326.

SEC. 433. NONNEGOTIABLE CONTRACTS.—All nonnegotiable written agreements for the payment of money, including nonnegotiable bills of exchange and promissory notes, or for the delivery of personal property, all open accounts, debts, and demands of a liquidated character, except claims against the United States or the salaries of public officers, may be assigned in writing, so as to vest in the assignee a right to sue for the same in his own name.

See section 1566.

Metropolitan Coach Co. v. Freund, 42 App. D. C. 283 (1914); 42 W. L. R. 326.

Subscriptions to the capital stock of a corporation may be assigned by the corporation, so as to give the assignee a right to sue in his own name. *Crook v. Trust Co.*, 32 App. D. C. 490 (1909); 37 W. L. R. 122.

As to assignment of certificates of stock. *National Safe Deposit Co. v. Hibbs*, 32 App. D. C. 459 (1909); 37 W. L. R. 90, affirmed in 229 U. S. 391.

As to splitting cause of action by assignments, see *Sincell v. Davis*, 24 App. D. C. 218 (1904); 32 W. L. R. 746.

SEC. 434. GENERAL ASSIGNMENTS.—In case of a general assignment which shall include choses in action, it shall not be necessary to execute a separate assignment of each chose in action, but the assignee shall be entitled, by virtue of the general assignment, to sue in his own name on the several choses in action included therein.

See cases cited in sections 431-433.

CHAPTER TWELVE

ASSIGNMENT OF INSOLVENT DEBTORS

SEC. 435. INVENTORY.—In all cases of voluntary assignments hereafter made in the District of Columbia for the benefit of creditors, the debtor shall annex to such assignment an inventory, under oath or affirmation, of his estate, real and personal, according to the best of his knowledge, and also a list of his creditors, their respective residences and places of business, if known, and the amounts of their respective demands; but such inventory shall not be conclusive as to the amount of the debtor's estate, and such assignment shall vest in the assignee the title to any other property, except what is legally exempt, belonging to the debtor at the time of making the assignment and comprehended within the general terms of the same.

See section 1106.

Act of February 24, 1893, sec. 1 (27 Stat. L., 474).

Assignment is admissible in evidence in a suit by the assignee to show his right to maintain the action. *Mazza v. Russell*, 47 App. D. C. 87 (1917); 45 W. L. R. 758.

As to law prior to adoption of code, see:

Keane v. Chamberlain, 14 App. D. C. 84 (1899); 27 W. L. R. 98.

Strasburger v. Dodge, 12 App. D. C. 37 (1898); 26 W. L. R. 8.

Smith v. Herrell, 11 App. D. C. 425 (1897); 25 W. L. R. 822.

Droop v. Ridenour, 11 App. D. C. 224 (1897); 25 W. L. R. 481.

Cissell v. Johnston, 4 App. D. C. 335 (1894); 22 W. L. R. 335, followed in *Star Co. v. Johnston*, 4 App. D. C. 355.

SEC. 436. The assignee in every such assignment shall be a resident of the District of Columbia, his assent shall appear in writing in, or at the end of, or indorsed on, the assignment, and the assignment shall be invalid unless duly acknowledged and recorded within five days after its execution in the land records of the said District. The trust created by such assignment shall be executed under the supervision and control of the supreme court of the District of Columbia.

Act of February 24, 1893 (sec. 1), 27 Stat. L. p. 474.

Cases cited under section 435.

SEC. 437. BOND OF ASSIGNEE.—Immediately upon the filing of such assignment for record it shall be the duty of the assignee to execute and file in the clerk's office of the supreme court of the District his bond to the United States, in an amount and with security to be approved by the justice holding the equity court, conditioned for the faithful performance of his duties according to law, and said court may from time to time require said assignee, or any trustee appointed in his place, to give additional security whenever the interests of the creditors demand the same.

Act of February 24, 1893 (sec. 1), 27 Stat. L. p. 474.

Cases cited under section 435.

SEC. 438. APPOINTMENT BY COURT.—If the assignee named in any such assignment shall fail or refuse to comply with any of the requirements aforesaid, the justice holding the equity court may, on the application of the assignor or any creditor interested in such assignment, remove said assignee and appoint a trustee in his place to execute the trusts created by said assignment, who shall give bond as the court may require. And said court shall have power to accept the resignation of any assignee or trustee, and in case of his resignation, death, or removal from the District to appoint a trustee in his place. The court shall also have power, for cause shown, on the application of any surety, creditor, or other person interested, to remove any assignee or trustee and appoint a trustee in his place, and to make and enforce all orders necessary to put the newly appointed trustee in possession of all property, moneys, books, papers, and other effects covered by the assignment. And in case of the death of any assignee or trustee the court may require his executor or administrator to settle the account of said assignee or trustee and to deliver over to his successor all property and other effects belonging to the trust, in default of which said successor may bring suit upon the bond of said deceased assignee or trustee *or upon the bond of such executor or administrator, accordingly as such assignee or trustee, executor or administrator is the party in default.*

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 530), adding “or upon the bond of such executor, etc.”

Metropolitan Coach Co. v. Freund, 42 App. D. C. 283 (1914) ; 42 W. L. R. 326.

SEC. 439. DUTIES OF ASSIGNEE.—It shall be the duty of the assignee or trustee, after giving bond as aforesaid, to collect and take into his possession all the property and effects covered by the assignment, and to that end he may bring suit in his own name to recover debts due or property belonging to the assignor and embraced in the assignment. And the court may require the assignor to be examined under oath touching his said property, and may pass all orders necessary to prevent any fraudulent transfer of or change in the property of the assignor. The said assignee or trustee shall return inventories of the assets coming to his hands and, under the direction of the court, sell and dispose of the same, and his conveyance of any property of the assignor, real or personal, shall transfer the entire title of the assignor therein to any purchaser. When the assets have been converted into money the said assignee or trustee shall settle his accounts and make distribution among the creditors, under the direction of the court, according to the usual course of proceeding in equity in creditor's suits.

Metropolitan Coach Co. v. Freund, *supra*.

SEC. 440.—PREFERENCES TO BE VOID.—Every provision in any voluntary assignment hereafter made for the payment of one debt or liability in preference to another shall be void, and all debts and liabilities within the provisions of the assignment shall be paid pro rata from the assets: *Provided*, That nothing herein contained shall be held to affect the priority of liens and incumbrances created bona fide and existing before the execution of such assignment.

Act of February 24, 1893, sec. 2 (27 Stat. L., p. 474).

SEC. 441. CREDITORS TO BE EQUAL.—Any proceeding instituted under this law by one or more creditors shall be deemed to be for the

equal benefit of all creditors, but the court may make such allowance to the creditor or creditors instituting the same, out of the fund to be distributed, for expenses, including counsel fees, as may be just and equitable.

SEC. 442. FRAUDULENT ASSIGNMENTS.—Nothing herein contained shall prevent any creditor otherwise entitled from attacking any assignment as made to hinder, delay, or defraud the creditors of the assignor, and whenever any such assignment shall appear to the court to have been made with such intent, the court may enjoin any proceeding thereunder, and upon finally decreeing the same to be void may appoint a trustee with power to take possession of all the effects of the debtor and may pass and enforce all orders necessary to put him in possession of the same, and said trustee shall qualify in the same manner and perform the same duties as the trustee provided for in the foregoing sections.

See sections 470, 1120 et seq.

See cases cited under section 435.

Kansas City Packing Co. v. Hoover, 1 App. D. C. 268 (1893) ; 21 W. L. R. 707.

SEC. 443. NOTICES TO CREDITORS.—In all cases of assignment the court shall require the trustee or trustees, whether named in the assignment or appointed by the court, in pursuance of the sections aforesaid, to give notice as the court may think proper to all the creditors of the assignor to produce and prove their respective claims against the assignor before the auditor of the court, to the end that they may be fairly adjudicated and the said creditors may share equally the assets of the insolvent assignor, subject, however, to any legal priorities created by valid incumbrances antedating the assignment.

SEC. 444. EXEMPT PROPERTY NOT TO BE INCLUDED.—No assignment for the benefit of creditors shall be construed to include or cover any property exempt from levy or sale on execution unless the exemption is expressly waived; and the court may direct the manner in which exempt property may be ascertained and set aside before any sale by the trustee or trustees.

See sections 1105, 1106.

CHAPTER THIRTEEN

ATTACHMENTS

SEC. 445. CAUSES.—In any action at law in the Supreme Court of the District of Columbia or the municipal court of said District, for the recovery of specific personal property, or a debt, or damages for the breach of a contract, express or implied, if the plaintiff, his agent or attorney, either at the commencement of the action or pending the same, shall file an affidavit showing the grounds of his claim and setting forth that the plaintiff has a just right to recover what is claimed in his declaration, and where the action is to recover specific personal property stating the nature and, according to affiant's belief, the value of said property and the probable amount of damages to which the plaintiff is entitled for the detention thereof, and where the action is to recover a debt stating the amount thereof, and where the action is to recover damages for the breach of a contract setting out, specifically and in detail, the breach complained of and the actual damage resulting therefrom, and also stating either, first, that the defendant is a foreign corporation or is not a resident of the District, or has been absent therefrom for at least six months; or, second, that the defendant evades the service of ordinary process by concealing himself or temporarily withdrawing himself from the District; or, third, that he has removed or is about to remove some or all of his property from the District, so as to defeat just demands against him; or, fourth, that he has assigned, conveyed, disposed of, or secreted, or is about to assign, convey, dispose of, or secrete his property with intent to hinder, delay, or defraud his creditors; or, fifth, that the defendant fraudulently contracted the debt or incurred the obligation respecting which the action is brought, the clerk shall issue a writ of attachment and garnishment, to be levied upon so much of the lands, tenements, goods, chattels, and credits of the defendant as may be necessary to satisfy the claim of the plaintiff: *Provided*, That the plaintiff shall first file in the clerk's office a bond, executed by himself or his agent, with security to be approved by the clerk, in twice the amount of his claim, conditioned to make good to the defendant all costs and damages which he may sustain by reason of the wrongful suing out of the attachment.

See section 9.

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 563), repealing 31 Stat. L., p. 1189. R. S. D. C. secs. 782-786; Comp. Stat. D. C., p. 464, secs. 101 et seq.

The requirements of section 445 as to the filing of a bond are not superseded by the act of April 19, 1920 (41 Stat. L. 564), section 479a of the code. *Motor Corporation v. Car Co.*, 51 App. D. C. 109 (1921); 49 W. L. R. 789.

Attachment may be levied against property of the defendant in the possession of the plaintiff. *Harriman v. Richardson*, 51 App. D. C. 24 (1921); 49 W. L. R. 434.

"We do not consider that the attachment statute is only meant to apply to those actions for damages for breach of contract which are precisely liqui-

dated and ascertained." *Suter v. Dental Co.*, 45 App. D. C. 92 (1916); 44 W. L. R. 290. As to sufficiency of affidavit averring damages see *ib.*

A surety on a bond given under section 454 of the code cannot object, except in case of fraud, to defects in original affidavits which render the attachment merely voidable. *National Surety Co. v. Poates*, 43 App. D. C. 334 (1915); 43 W. L. R. 233.

Bond is sufficient if it is twice the amount sued upon; "uncertain costs and interest which may accrue during litigation are no part of a plaintiff's claim at the date of suit." *Rhodes v. Stone Co.*, 43 App. D. C. 298 (1915); 43 W. L. R. 183.

U. S. Surety Co. v. American Fruit Co., 40 App. D. C. 239 (1913), 41 W. L. R. 372, writ of error dismissed, 238 U. S. 140.

Thought the affidavit preceding the issuance of the writ may be so defective as to warrant a reversal of the judgment by an appellate court such defect will not deprive the court of the jurisdiction acquired by the writ levied upon defendant's property. "The proceeding being in rem, the levy of the writ 'is the one essential requisite to jurisdiction.'" *Moses v. Hayes*, 36 App. D. C. 194 (1911); 39 W. L. R. 39. If the bond is defective, the defendant may move to quash the attachment. *Ib.* (See also *Hayes v. Conger*, 36 App. D. C. 202 (1911), 39 W. L. R. 57.

A mere suspicion that the defendant intends to remove his property from the District is not sufficient to justify an attachment. *Mackenzie v. Crouse*, 35 App. D. C. 291 (1910); 38 W. L. R. 430.

"Neither executors nor administrators are named in the section as subject to attachment, and as the attachment of the property of an estate is obviously inconsistent with the law of administration, nothing less, we think, than express authorization would warrant." *Jordan v. Landram*, 35 App. D. C. 89 (1910); 38 W. L. R. 331, citing *Graham v. Fitch*, 13 App. D. C. 569 (referring to foreign executors), *cf.* Sec. 457 (as amended).

Where an attachment is issued against the property of one of several defendants, the bond properly runs to him and not to the other defendants against whom attachment did not issue. *Bradford v. Brown*, 22 App. D. C. 455 (1903); 31 W. L. R. 696.

A Member of Congress, present in the District to attend its sessions, is to be regarded (in the absence of a plain, unequivocal statement to the contrary) as a resident of the State which he represents, and therefore a nonresident of the District within the meaning of the attachment statute. *Howard v. Trust Co.*, 12 App. D. C. 222 (1898); 26 W. L. R. 101, citing *Robinson v. Morrison*, 2 App. D. C. 105; 22 W. L. R. 105.

As to withdrawing oneself from the District to evade process, see *Wilkins v. Hillman*, 8 App. D. C. 469 (1896); 24 W. L. R. 300.

See also *Cissell v. Johnston*, 4 App. D. C. 335 (1894); 22 W. L. R. 330; *Wieler v. Garner*, 4 App. D. C. 329 (1894); 22 W. L. R. 729; *Barbour v. Hotel Co.*, 2 App. D. C. 174 (1894); 22 W. L. R. 33.

SEC. 446. SERVICE.—Every such writ shall require the marshal to serve a notice on the defendant, if he be found in the District, and on any person in whose possession any property or credits of the defendant may be attached, to appear in said court on or before the twentieth day, exclusive of Sundays and legal holidays, after service of such notice, and show cause, if any there be, why the property so attached should not be condemned and execution thereof had; and the marshal's return shall show the fact of such service. If the defendant is returned "Not to be found," such notice shall be given by publication to the following effect, namely:

In the supreme court of the District of Columbia.

A B, plaintiff,	} At law. Numbered —.
versus	
C D, defendant.	

The object of this suit is to recover (here state it briefly) and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim.

It is, therefore, this ---- day of -----, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default.

By the court:

_____, Justice.

And every such order shall be published at least once a week for three successive weeks or oftener, or for such further time and in such manner as may be ordered by the court.

See section 106.

See cases cited under section 445.

SEC. 447. INTERROGATORIES.—In all cases of attachment the plaintiff may exhibit interrogatories in writing in such form as may be allowed by the rules or special order of the court, to be served on any garnishee, concerning any property of the defendant in his possession or charge, or any indebtedness of his to the defendant at the time of the service of the attachment, or between the time of such service and the filing of his answers to said interrogatories; and the garnishee shall file his answers under oath to such interrogatories within ten days after service of the same upon him. In addition to the answers to written interrogatories required of him, the garnishee may, on motion, be required to appear in court and be examined orally under oath touching any property or credits of the defendant in his hands.

See section 467, 1089 et seq.

Quære: Whether a corporation garnishee may answer per alium through an agent or must answer per se, through its officers. *Int. Seal Co. v. Beyer*, 33 App. D. C. 172 (1909); 37 W. L. R. 261. An affidavit signed by the president, secretary, or other proper officer of a corporation is prima facie to be considered the act of the corporation. *Ib.* Particularly when no effort was made to examine deponent orally as to the scope of his authority. *Ib.* Cf. *Moses v. Hayes*, 36 App. D. C. 195 (1911); 39 W. L. R. 39, as to authority of agent to execute bond.

Property in a safe-deposit box in a trust company is subject to garnishment. *Washington L. & Tr. Co. v. Coal Co.*, 26 App. D. C. 149 (1905); 33 W. L. R. 738. Trust company must answer interrogatory as to whether or not defendant has a safe deposit box. *Ib.*

Upon failure of garnishee to answer within time limit, adverse party must apply to enforce such default. A failure to do so is a tacit consent to an extension of time within which the answer may be filed. *Banville v. Sullivan*, 11 App. D. C. 23 (1897); 25 W. L. R. 345. It is not necessary to secure leave of court to file the answer after expiration of time limit, when no steps have been taken to enforce default. *Ib.*

SEC. 448. ADDITIONAL ATTACHMENTS.—Upon the application of the plaintiff, his agent, or attorney, other attachments founded on the original affidavits may be issued from time to time, to be directed, executed, and returned in the same manner as the original, and without further publication, against a nonresident or absent defendant, and without additional bond, unless required by the court.

SEC. 449. SUFFICIENCY OF BOND.—In case the defendant or any other person interested in the proceedings is not satisfied with the sufficiency of the surety or sureties or with the amount of the penalty named in the bond aforesaid, he may apply to the court for an order

requiring the plaintiff to give an additional bond in such sum and with such security as may be approved by the court; and in case of the plaintiff's failure to comply with any such order the court may order the attachment to be quashed and any property attached or its proceeds to be returned to the defendant or otherwise disposed of, as to the court may seem proper.

See section 445.

Cited but not construed in *Moses v. Hayes*, 36 App. D. C. 194 (1911); 39 W. L. R. 39.

SEC. 450. DEBTS NOT DUE.—A creditor may maintain an action and have an attachment against his debtor's property and credits, as aforesaid, where his debt is not yet due and payable, provided the plaintiff, his agent, or attorney shall file in the clerk's office, at the commencement of the action, an affidavit, supported by the testimony of one or more witnesses, as to the amount and justice of the claim and the time when it will be payable, and also setting forth that the defendant has removed or is removing or intends to remove a material part of his property from the District with the intent or to the effect of defeating just claims against him should only the ordinary process of law be used to obtain judgment against him, and shall also comply with the condition as to filing a bond prescribed by section four hundred and forty-five aforesaid. The plaintiff in such case shall not have judgment before his claim becomes due; and in case the attachment is quashed the action shall be dismissed, but without prejudice to a future action.

SEC. 451. TRAVERSING AFFIDAVITS.—If the defendant in any case shall file affidavits traversing the affidavits filed by the plaintiff the court shall determine whether the facts set forth in the plaintiff's affidavits as ground for issuing the attachment are true, and whether there was just ground for issuing the attachment: and if, in the opinion of the court, the proofs do not sustain the affidavit of the plaintiff, his agent, or attorney the court shall quash the writ of attachment; and this issue may be tried by the court or a judge at chambers after three days notice. The said issue may be tried as well upon oral testimony as upon affidavits, and, if the court shall deem it expedient, a jury may be impaneled to try the issue.

See cases cited under sec. 445.

Robinson v. Morrison, 2 App. D. C. 105 (1894); 22 W. L. R. 35.

SEC. 452. ON WHAT LEVIED.—The attachment may be levied on the lands and tenements, whether leasehold or freehold, and personal chattels of the defendant not exempt by law, whether in the defendant's or a third person's possession, and whether said defendant's title to said property be legal or equitable, and upon his credits in the hands of a third person, whether due and payable or not, and upon his undivided interest in a partnership business. Every attachment shall be a lien on the property attached from the date of its delivery to the marshal, and if different persons obtain attachments against the same defendant the priorities of the liens of said attachments shall be according to the dates when they were so delivered to the marshal.

See sections 1088, 1091.

Attachment may be levied against property of the defendant in the possession of the plaintiff. *Harriman v. Richardson*, 51 App. D. C. 24 (1921); 49 W. L. R. 434.

May be levied against safe deposit box. (See *Trust Co. v. Coal Co.*, cited under section 447.)

Smith v. Herrell, 11 App. D. C. 425 (1897); 25 W. L. R. 822.

As to attachment on property subject to deed of trust, see *The Richmond v. Wake*, 1 App. D. C. 447 (1893); 21 W. L. R. 819.

SEC. 453. HOW LEVIED.—The attachment shall be sufficiently levied on the lands and tenements of the defendant by said property being mentioned and described in an indorsement on said attachment, made by the officer to whom it is delivered for service, to the following effect, namely:

Levied on the following estate of the defendant, A B, to wit:
(Here describe) this ----- day of -----

C D, Marshal.

And by service of a copy of said attachment, with said indorsement, and the notice required by section four hundred and forty-six aforesaid on the person, if any, in possession of said property.

See section 1090.

SEC. 454. The attachment shall be levied upon personal chattels by the officer taking the same into his possession and custody, unless the defendant shall give to the officer his undertaking, to be filed in the cause, with sufficient security, to the following effect, namely:

A B, plaintiff,	} At law. Numbered —.
versus	
C D, defendant.	

The defendant and -----, his surety, in consideration of the discharge from the custody of the marshal of the property seized by him, upon the attachment sued out against the defendant, on the ---- day of -----, anno Domini nineteen hundred -----, in the above entitled cause, appear, and submitting to the jurisdiction of the court, hereby undertake, for themselves and each of them, their and each of their heirs, executors, and administrators, *or successors or assigns*, to abide by and perform the judgment of the court in the premises in relation to said property, which judgment may be rendered against all the parties whose names are hereto signed.

(Signed)

C D.

E F.

Or unless the person in whose possession the property is attached shall give to the officer, to be filed in the cause, an undertaking in the following form or to the same effect, namely:

A B, plaintiff,	} At law. Numbered —.
versus	
C D, defendant.	

Whereas by virtue of an attachment issued in the above-entitled suit, the United States marshal for the District of Columbia has attached certain property in the hands of the undersigned E F, as garnishee, namely, (here describe) of the value of ----- dollars; and now, therefore, the said E F and G H, as surety, appearing in said suit, and submitting to the jurisdiction of the court, hereby undertake for themselves and each of them, their and each of their heirs, executors, and administrators to abide by the judgment of the court in relation to said property, and that if the same shall be

condemned to satisfy the claim of the plaintiff, judgment may be rendered against all of the undersigned for the value of said property and costs, to be executed against them, and each of them, unless said property shall be forthcoming to satisfy the judgment of condemnation.

(Signed)

E F.
G H.

And in either of said cases the attachment shall be sufficiently levied by the taking of the undertaking, as above provided for; and in the latter case the recital of the undertaking shall contain a sufficient description of the property and its value, which value shall be ascertained by an appraisement to be made under direction of the officer and returned with the writ.

32 Stat. L. pt. 1, p. 530.

See sections 446, 455.

National Surety Co. v. Poates 43 App. D. C. 334 (1915); 43 W. L. R. 233.

SEC. 455. RELEASES.—Either the defendant or the person in whose possession the property was may obtain a release of the same from the attachment, after it has been taken into the custody of the marshal and the writ has been returned, by giving the undertaking required of him as aforesaid, with security to be approved by the court.

The plaintiff may except to the sufficiency of the undertaking accepted as aforesaid by the marshal and, if the exceptions be sustained, the court shall require a new undertaking, with sufficient surety, by a day to be named, in default of which he shall be liable to the plaintiff on his official bond for any loss sustained by the plaintiff through such default.

Either the defendant or the person in whose possession credits are attached may obtain a release of the same from the attachment by filing an undertaking with security to be approved by the court.

If property or credits attached be released upon an undertaking given as aforesaid, and judgment in the action be rendered in favor of the plaintiff, it shall be a joint judgment against both the defendant and all persons in said undertaking for the appraised value of the property or the amount of the credits.

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 564), repealing 31 Stat. L., p. 1189, as amended by 32 Stat. L. pt. 1, p. 530.

National Surety Co. v. Poates, 43 App. D. C. 334 (1915); 43 W. L. R. 233, citing with approval Surety Co. v. Fruit Product Co., 40 App. D. C. 239 (1913), in which a writ of error was dismissed in 238 U. S. 140.

SEC. 456. The attachment shall be levied on credits of the defendant, in the hands of a garnishee, by serving the latter with a copy of the writ of attachment and of the interrogatories accompanying the same, and a notice that any property or credits of the defendant in his hands are seized by virtue of the attachment, besides the notice required by section four hundred and forty-six aforesaid; and the undivided interest of the defendant in a partnership business shall be levied on by a similar service on the defendant's partner or partners.

“Property of a defendant in a safe-deposit box of a trust company is either in the possession of the defendant or in the possession of the trust company. If it is in the possession of the defendant, under the code, it appears liable to attachment and execution. If it is in the possession of the trust company,

such company may be garnisheed therefor, as in possession of personal property of the defendant capable of being seized and sold on execution." *Trust Co. v. Coal Co.*, 26 App. D. C. 149 (1905) ; 33 W. L. R. 738.

SEC. 457. The attachment may be levied upon debts owing by any person to the defendant upon judgment or decree by a similar service upon such party as in the preceding section directed; but execution may issue for the enforcement of such judgment or decree, notwithstanding the attachment, provided that the money collected upon the same be required to be paid into court to abide the event of the proceedings in attachment and applied as the court may direct.

It may also be levied upon money or property of the defendant in the hands of the marshal or coroner, and shall bind the same from the time of service, and shall be a legal excuse to the officer for not paying or delivering the same, as he would otherwise be bound to do.

The attachment may also be levied upon money or property of the defendant in the hands of an executor or administrator, and shall bind the same from the time of service; but if the executor or administrator shall make return to the writ that he can not certainly answer whether the defendant's share of the money or property in his hands will prove sufficient to pay the plaintiff's debt, no judgment of condemnation shall be rendered as against such executor or administrator until the passage by the orphan's court of his final or other account showing money or property in his hands to which the defendant is entitled.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 530).

See section 1091.

See *Jordan v. Landram*, 35 App. D. C. 89, cited under section 445, supra. *Miller Shoemaker Co. v. Sturgeon*, 31 App. D. C. 406 (1908) ; 36 W. L. R. 350.

SEC. 458. SALE OF PROPERTY.—The court may make all orders necessary for the preservation of the property attached during the pendency of the suit; and if the property be perishable, or for other reasons a sale of the same shall appear expedient, the court may order that the same be sold and its proceeds paid into court and held subject to its order on the final decision of the case.

And if it shall seem expedient, the court may appoint a receiver to take possession of the property, who shall give bond for the due performance of his duties, and, under the direction of the court, shall have the same powers and perform the same duties as a receiver appointed according to the practice in equity.

See section 1093

SEC. 459. PLEAS BY GARNISHEE.—A garnishee in any attachment may plead any plea or pleas which the defendant might or could plead if he had appeared to the suit.

See section 1094.

SEC. 460. WHO MAY DEFEND.—Any defendant, any garnishee, any party to a forthcoming undertaking, or the officer who might be adjudged liable to the plaintiff by reason of such undertaking being adjudged insufficient, or any stranger to the suit who may make claim, as hereinafter provided, to the property attached, may plead to the attachment; and such pleas shall be considered as raising an issue without replication, and any issue of fact thereby made may be

tried by the court or by a jury impaneled for the purpose, if either party desires to.

Surety Co. v. Fruit Co., 40 App. D. C. 239 (1913) ; writ of error dismissed, 238 U. S. 140.

Morimura v. Samaha, 25 App. D. C. 189 (1905) ; 33 W. L. R. 258.

SEC. 461. TRAVERSE OF ANSWERS OF GARNISHEE.—If any garnishee shall answer to interrogatories that he has no property or credits of the defendant, or less than the amount of the plaintiff's claim, the plaintiff may traverse such answer as to the existence or amount of such property or credits, and the issue thereby made may be tried as provided in the preceding section; and in all such cases where judgments shall be entered for the garnishee the plaintiff shall be adjudged to pay to the garnishee, in addition to the taxed costs, a reasonable counsel fee. And if such issue be found for the plaintiff, judgment shall be rendered as if possession of the property or credits has been confessed by the garnishee.

See sections 473, 1095.

"In the absence of a statutory limitation, an attachment return must be made within a reasonable time, or it will be held to be discontinued." *Simpson v. Minnix*, 30 App. D. C. 582 (1908) ; 36 W. L. R. 200. Where attachment had been outstanding for 11 years, and no issue joined on garnishee's return, it will be deemed abandoned and the action discontinued, and a scire facias may issue to revive the judgment. *Ib.*

SEC. 462. CLAIMANTS.—Any person may file his petition in the cause, under oath, at any time before the final disposition of the property attached or its proceeds, except where it is real estate, setting forth a claim thereto or an interest in or lien upon the same, acquired before the levy of the attachment; and the court, without other pleading, shall inquire into the claim, and, if either party shall request it, impanel a jury for the purpose, who shall be sworn to try the question involved as an issue between the claimant as plaintiff, and the parties to the suit as defendants, and the court may make all such orders as may be necessary to protect any rights of the petitioner.

See section 1096.

In a replevin action against the United States marshal to recover goods seized under writ of attachment, a plea that the plaintiff should have proceeded under section 462 comes too late when made after close of plaintiff's case. *Splain v. Goodrich Rubber Co.*, 53 App. D. C. 300 (1923) ; 51 W. L. R. 539.

Proceeds of the sale of property in the hands of a purchaser from a foreign receiver who brought the property into this jurisdiction (and was vested with title and a right to sell the same) are not subject to attachment by domestic creditor of original owner. *Jenkins v. Purcell*, 29 App. D. C. 209 (1907) ; 35 W. L. R. 222.

Daniels v. Solomon, 11 App. D. C. 163 (1897), 25 W. L. R. 436.

Matthai v. Conway, 2 App. D. C. 45 (1893) ; 22 W. L. R. 39.

SEC. 463. JUDGMENTS.—If the defendant in the action has been served with process, final judgment shall not be rendered against the garnishee until the action against the defendant is determined. If in such action judgment is rendered for the defendant, the garnishee shall be discharged and shall recover his costs, and the property attached or its proceeds shall be restored to the garnishee or to the defendant, as the case may require.

SEC. 464. If in such action judgment is rendered in favor of the plaintiff against the defendant, and it shall appear that the plaintiff

is entitled to a judgment of condemnation of the property attached, the court shall proceed to enter such judgment in the attachment as in the following sections directed.

See section 1097.

SEC. 465. If the action be to replevy specific personal property and the same has not been replevied, other property may be attached in said action to recover damages and costs, and if the same be adjudged, the proceedings shall be the same as herein provided in other cases of money claims.

SEC. 466. If, in any form of action, specific property has been attached and remains under the control of court, judgment of condemnation of the same shall be entered, and so much thereof as may be necessary to satisfy the demand of the plaintiff shall be sold under fieri facias; or if the said property shall have been sold under interlocutory order of the court, the proceeds, or so much thereof as may be necessary, shall be applied to the plaintiff's claim by order of the court.

See act of June 30, 1902 (32 Stat. L., pt. 1, p. 530) repealing a portion of 31 Stat. L., p. 1181.

Where there are two judgments, one a personal judgment and the other one of condemnation, "it would be unreasonable to hold that the plaintiff must look for his satisfaction to the latter alone. He is entitled to realize his personal judgment out of any property of the judgment debtor which he finds available for the purpose; and he may wholly disregard the attached property, if he so desires." *Adriance, Platt & Co. v. Heiskell*, 8 App. D. C. 240 (1896); 24 W. L. R. 217.

SEC. 467. If a garnishee shall have admitted credits in his hands, in answer to interrogatories served upon him, or the same shall have been found upon an issue made as aforesaid, judgment shall be entered against him for the amount of credits admitted or found as aforesaid, not exceeding the plaintiff's claim, less a reasonable attorney's fee to be fixed by the court, and costs, and execution had thereon; but if said credits shall not be immediately due and payable, execution shall be stayed until the same shall become due; and if the garnishee shall have failed to answer the interrogatories served on him, or to appear and show cause why a judgment of condemnation should not be entered, judgment shall be entered against him for the whole amount of the plaintiff's claim, and costs, and execution had thereon.

See section 1098.

Referred to but not construed in *Int. Seal Co. v. Beyer*, 33 App. D. C. 172 (1909); 37 W. L. R. 261.

SEC. 468. If the property attached has been delivered to or retained by a garnishee, upon his executing an undertaking as provided in section four hundred and fifty-four, judgment of condemnation of said property shall be rendered, as provided in section four hundred and sixty-six, and judgment shall also be entered that the plaintiff recover from the garnishee and his surety or sureties the value of said property, not exceeding the plaintiff's claim, said judgment to be entered satisfied if said property be forthcoming and delivered to the marshal, undiminished in value, within ten days after said judgment; otherwise, execution thereof to be had against said garnishee and his surety or sureties; and if said property shall

be so delivered to the marshal the same shall be sold by him under fieri facias to satisfy said judgment of condemnation.

SEC. 469. JUDGMENT TO PROTECT GARNISHEE.—Any judgment of condemnation against a garnishee, and execution thereon, or payment by such garnishee in obedience to the judgment or any order of the court, shall be a sufficient plea in bar in any action brought against him by the defendant in the suit in which the attachment is issued, for or concerning the property or credits so condemned.

SEC. 470. FRAUDULENT ASSIGNMENTS.—If the ground upon which an attachment is applied for be that the defendant has assigned, conveyed, or disposed of his property with intent to hinder, delay, or defraud his creditors, the attachment may be levied upon the property alleged to be so assigned or conveyed in the hands of the alleged fraudulent assignee or transferee, as a garnishee.

See sections 456, 460, 1120, et seq.

Upon an allegation that defendant has made a fraudulent assignment to his wife and son to defraud his creditors, a garnishee may be compelled to disclose whether the wife or son has rented a safe deposit box from it. *Trust Co. v. Coal Co.*, 26 App. D. C. 149 (1905); 33 W. L. R. 738.

Morimura v. Samaha, 25 App. D. C. 189 (1905); 33 W. L. R. 258.

"Where an instrument contains provisions, the necessary legal effect of which is to work a fraud upon creditors, the assignor is conclusively presumed to have intended the reasonable consequences of his own act," and the property in his hands is subject to attachment. *Cissell v. Johnston*, 4 App. D. C. 335 (1894); 22 W. L. R. 730.

SEC. 471. The said garnishee may have the same benefit of section four hundred and fifty-one aforesaid as the defendant in the action; and if the court shall be of opinion, upon the hearing of the affidavits filed, that the attachment ought not to have issued or to have been levied on the property claimed by said garnishee, the said attachment may be quashed as to the said garnishee and the said levy set aside.

SEC. 472. If the said levy shall not be so set aside, the said garnishee may plead that he was a bona fide purchaser from the defendant for value without notice of any fraud on the part of said defendant, and such plea shall be held to make an issue, without any further pleading in reply thereto; and said issue may be tried as directed in section four hundred and sixty aforesaid.

Cited in *Morimura v. Samaha*, 25 App. D. C. 189 (1905); 33 W. L. R. 258.

SEC. 473. If said issue is found in favor of the said garnishee, judgment shall be rendered in his favor for his costs and a reasonable counsel fee. If said issue be found against such garnishee, but judgment in the action is rendered in favor of the defendant, the said attachment shall be dissolved, and said garnishee shall recover his costs.

See section 460.

What is a reasonable fee in a particular case is within the discretion of the court. *Morimura v. Samaha*, 25 App. D. C. 189 (1905); 33 W. L. R. 258. This provision is constitutional. *Ib.* Attorney's fee not allowed when issue found against garnishee. *Ib.*

SEC. 474. If the said issue is found against said garnishee and judgment in the action is rendered in favor of the plaintiff against the defendant, or the defendant, not being found, has failed to appear in obedience to the order of publication against him, if it shall appear upon the verdict of a jury that the claim of the plaintiff against said

defendant is well founded, a judgment of condemnation of the property attached shall be rendered, as directed in section four hundred and sixty-four aforesaid.

SEC. 475. TRIAL OF ISSUES.—All issues raised by pleas to the attachment, in any case, may be tried at the same time as the issues raised by the pleadings in the action, or separately, as the convenience of the court may require.

Cited in U. S. ex. rel. *Robertson v. Banard*, 24 App. D. C. 8 (1904) ; 32 W. L. R. 458.

SEC. 476. THIS ACT NOT TO PREVENT BILL IN EQUITY.—Nothing herein contained shall be construed as depriving a judgment creditor of the right to file a bill in equity to enforce his judgment against an equitable interest in real or personal estate of the judgment defendant, or to have a conveyance of the real or personal estate by said defendant, made with intent to hinder, delay, and defraud his creditors, set aside.

See section 470.

SEC. 477. ATTACHMENT DOCKETS.—The clerk of said court shall keep an attachment docket, in which, as well as in the regular docket, shall be entered all attachments levied upon real estate, with a description, in brief, of the real estate so levied upon; and said attachments shall be indexed in the names of the defendant and of any person in whose possession said property may have been levied upon.

CHAPTER FOURTEEN

BONDS AND UNDERTAKINGS

SEC. 478. BONDS.—A bond, when required or referred to, in the provisions of this code, shall be understood to signify an obligation in a certain sum or penalty, subject to a condition, on breach of which it is to become absolute and to be enforceable by action.

As to distinction between bond and undertaking, see *Tenny v. Taylor*, 1 App. D. C. 223 (1893), 21 W. L. R. 649.

SEC. 479. UNDERTAKINGS.—An undertaking shall be understood to signify an agreement entered into by a party to a suit or proceeding, with or without sureties, upon which a judgment or decree may be rendered in the same suit or proceeding against said party and his sureties, if any, the said party and sureties submitting themselves to the jurisdiction of the court for that purpose.

As to distinction between bond and undertaking, see *Tenny v. Taylor*, 1 App. D. C. 223 (1893), 21 W. L. R. 649.

SEC. 479a. In all cases where, by the provisions of this code, a bond is required from an executor, administrator, administrator cum testamento annexo, administrator de bonis non, guardian, committee, collector, trustee, receiver, assignee for the benefit of creditors, or any other fiduciary appointed or confirmed by the Supreme Court of the District of Columbia, or any member thereof, or where a bond is required from any party to a cause or proceeding pending in such court, such bond shall be in the form of an undertaking, under seal, in a maximum amount to be fixed by the court, conditioned as required by law, the surety or sureties therein submitting themselves to the jurisdiction of the court and undertaking for themselves and each of them, their and each of their heirs, executors, administrators, successors, and assigns to abide by and perform the judgment or decree of the court in the premises, and further agreeing that, upon default by the principal in any of the conditions thereof, the damages may be ascertained in such manner as the court shall direct; that the court may give judgment thereon in favor of any person thereby aggrieved against such principal and sureties for the damages suffered or sustained by such aggrieved party, and that such judgment may be rendered in said cause or proceeding against all or any of the parties whose names are thereto signed.

And the said Supreme Court of the District of Columbia and its respective special terms, be, and they are hereby, vested with and given jurisdiction and authority to enter such judgments and decrees against the principal and surety or sureties, or any of them, upon such undertaking as law and justice shall require: *Provided*, That nothing herein contained shall deprive any party having a claim or

cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

All provisions of this code relating to actions, remedies and proceedings upon bonds of such fiduciaries shall apply and be effective as to such undertakings to the same extent as if such undertaking had been expressly mentioned and referred to therein.

Interpolated by act of April 19, 1920 (41 Stat. L., pt. 1, p. 564).

This section does not repeal section 445, relative to attachment bonds. *Tri-State Motor Co. v. Car Co.*, 51 App. D. C. 109 (1921); 49 W. L. R. 789.

SEC. 479b. In any proceeding in the Supreme Court of the District of Columbia or any special term thereof to recover damages upon a bond or undertaking given to obtain a restraining order or preliminary or pendente lite injunction the court, in assessing damages to be recovered thereunder, may include such reasonable counsel or attorney fees as the party aggrieved or damaged by such restraining order or injunction may have been put to or incurred in obtaining a dissolution thereof.

Interpolated by act of April 19, 1920 (41 Stat. L., pt. 1, p. 565).

SEC. 480. ACTIONS ON BONDS.—A bond in a penal sum, containing a condition that it shall be void on the payment of a certain sum of money, or the performance of an act, or of certain duties, shall have the same effect for the purpose of maintaining an action upon it as if it contained a covenant to pay the money or perform the act or the duties specified in the condition. But the damages to be recovered for a breach, or successive breaches, of the condition, as against the sureties therein, shall not exceed the penalty of the bond.

A bond executed to the United States is valid, although there is no previous statutory authorization therefor. *U. S. v. Pumphrey*, 11 App. D. C. 44 (1897); 25 W. L. R. 417.

Discontinuance of a suit as to the principal will not, in the absence of explanation, be sufficient to release the sureties on his bond who were named as codefendants. *Starr v. U. S.*, 8 App. D. C. 552 (1896); 24 W. L. R. 502.

By the execution of a bond and its return to the principal or his agent for delivery to the obligee the surety becomes estopped to set up any condition not known to that obligee, upon which his signature has been obtained. *U. S. v. Boyd*, 8 App. D. C. 440 (1896); 24 W. L. R. 298. Surety can not plead forgery of principal's name to bond when surety executes it after its purported execution by the principal. *Ib.*

In suit against sureties bond is to be strictly construed. *U. S. v. Maloney*, 4 App. D. C. 505 (1894); 22 W. L. R. 785. Recitals in bond, and all material traversable matter set forth in breaches assigned and which have not been traversed are to be taken as admitted and withdrawn from the province of the jury. *Ib.*

SEC. 481. BOND TO UNITED STATES BY OFFICERS.—Whenever a bond is executed to the United States by any fiduciary or public officer, conditioned for the performance of certain duties, in the performance of which private persons are interested, any such person aggrieved by a breach of such condition, shall be entitled to maintain an action thereon in his own name against the obligor and his sureties to recover damages for the injury suffered by him in consequence of such breach; and it shall be the duty of the custodian of such bond to furnish a certified copy thereof to said party for the purpose aforesaid on payment of the legal fees therefor.

32 Stat. L. Pt. 1, p. 530.

See act of August 13, 1894 (28 Stat. L. p. 278).

Action on an official bond running to the District of Columbia cannot be maintained by one not a party thereto, in the absence of the consent of the District or an express statute authorizing such action. *D. C. use of Langellotti v. Fidelity & Deposit Co.*, 50 App. D. C. 309 (1921); 49 W. L. R. 213. As to right of private party to sue on bond of inspector of plumbing of the District of Columbia, see *D. C. v. Ball*, 22 App. D. C. 543 (1903); 31 W. L. R. 726.

As to suits by the United States on official bonds, see *Goff v. U. S.* 22 App. D. C. 512 (1903); 31 W. L. R. 710; *Howgate v. U. S.*, 3 App. D. C. 277 (1894); 22 W. L. R. 345.

SEC. 482. BONDS OF TRUSTEES.—If any person appointed by order or decree of the court to the office of trustee or to any other fiduciary office shall give bond, with surety or sureties, for the due performance of his duties, he shall not be allowed to discharge said bond by receipts, releases, or acquittances from himself, as attorney for parties interested, to himself as such trustee or other fiduciary; but the funds or estate for the due application whereof he is responsible shall be considered as remaining in his hands, and said bond shall continue in force as against both principle and sureties until said funds or estate shall be fully accounted for and paid over or delivered to the parties interested therein, or their attorney, other than said trustee or other fiduciary duly authorized to receive the same.

Morse v. U. S. use of Hine, 29 App. D. C. 433 (1907), 35 W. L. R. 334, cited under section 156.

CHAPTER FIFTEEN

CONDEMNATION OF LAND FOR PUBLIC USE

SEC. 483. LAND FOR UNITED STATES AND DISTRICT OF COLUMBIA.—Whenever land in the District is needed for the use of the United States, or by the Commissioners of the District for sites of school-houses, fire or police stations, or for a right of way for sewers, or for any other municipal use authorized by Congress, and the same can not be acquired by purchase from the owners thereof at a price satisfactory to the officers of the Government authorized to negotiate for the same, application may be made to the supreme court of the District by petition in the name of the United States or of said Commissioners, as the case may be, for the condemnation of said land or said right of way and the ascertainment of its value.

R. S. D. C., secs. 252-265, 286-292; Comp. Stat. D. C. pp. 267, 268, 484, 485; act of Aug. 30, 1890 (26 Stat. L. 412).

This statute must be strictly construed; if doubt exists as to authority of commissioners to condemn it must be resolved in favor of the land owner. *Macfarland v. Elverson*, 32 App. D. C. 81 (1908); 36 W. L. R. 729. When power of condemnation is vested in municipal officers "it rests with such officers to determine whether it shall be exercised, and when and to what extent it shall be exercised." *Ib.* The words "authorized by Congress" limit only the preceding phrase "or for other municipal purposes," and has no reference to the preceding phrases. *Ib.* The fact that Congress has made no appropriation for payment of the land condemned at the time condemnation proceedings are instituted is no defense. *Ib.*

As to damages to be allowed in condemnation proceedings, and methods for determining the same, see *Seufferle v. Macfarland*, 28 App. D. C. 94 (1906); 34 W. L. R. 526.

SEC. 484. PETITION, WHAT TO SHOW.—Such petition shall contain a particular description of the property selected, with the names of the owners thereof and their residences, so far as the same may be ascertained, together with a plan of the land to be taken.

SEC. 484a. The jury commission of the District of Columbia shall prepare a special list of persons having the qualifications of jurors, as prescribed by section 215 of this code, and being also freeholders of the District of Columbia. The jury commission shall from time to time as may be necessary write the names contained in said special list on separate and similar pieces of paper, which they shall so fold or roll that the names can not be seen, and shall place the same in a special box to be provided for the purpose, and shall thereupon seal and lock said special box and after thoroughly shaking the same shall deliver it to the clerk of the Supreme Court of the District of Columbia for safe-keeping; but the same shall not be unsealed or opened except by said jury commission. From time to time, as ordered by the Supreme Court of the District of Columbia, or one of the justices thereof holding a special term for the trial of condemnation proceedings, the jury commission shall publicly break the seal of

said special box and proceed to draw therefrom by lot and without previous examination the names of such number of persons as the said court may from time to time direct to serve as commissioners or jurors in condemnation proceedings and certify the names so drawn to the clerk of said court. At the time of each drawing of condemnation commissioners or jurors from said special box there shall be in said special box the names of not less than one hundred persons possessing the qualifications hereinbefore prescribed. Except as in this section specially provided, sections 198 to 217, inclusive, of this code, so far as the same may be applicable, shall govern the qualifications of said commissioners and jurors in condemnation cases and the duties and conduct of said jury commissioners under this section. No person shall be eligible to serve as a condemnation commissioner or juror who has served as such commissioner or juror within one year.

Interpolated by act of April 19, 1920 (41 Stat. L. pt. 1, p. 565).

SEC. 485. CITATION TO OWNERS.—The said court holding a district court of the United States, shall thereupon cite all the owners and other persons interested to appear in said court, at a time to be fixed by the court, to answer said petition; and if it shall appear to the court that there are any owners or other persons interested who are under disability, the court shall give public notice of the time at which it will proceed with the matter of condemnation; and at such time, if it shall appear that there are any persons under disability who have appeared or who have not appeared, the court shall appoint a guardian ad litem for each such person, and shall thereupon order the jury commission to draw from the special box the names of as many persons as the court may direct, and from among the persons so drawn the court shall thereupon appoint three capable and disinterested commissioners to appraise the value of the respective interests of all persons concerned in such lands, under such regulations as to notice and hearing as shall seem meet.

Act of April 19, 1920 (41 Stat. L. 565), repealing 31 Stat. L. p. 1189.

SEC. 486. CONDEMNATION AND PAYMENT.—Such commissioners shall thereupon, after being duly sworn for the proper performance of their duties, examine the premises and hear the persons in interest, who may appear before them, and return their appraisement of the value of the interests of all persons, respectively, in such land; and when such report, or the verdict of the jury hereinafter provided for, shall be confirmed by the court, the President of the United States, in cases of condemnation for the use of the United States, shall, if he thinks the public interest requires it, cause payment to be made out of the money appropriated by Congress therefor to the respective persons entitled, according to the judgment of the court; and in case any of such persons are under disability or can not be found, or neglect to receive the payment, the money to be paid to any of them shall be deposited in the Treasury to their credit, unless there be some person lawfully authorized to receive the same under the direction of the court; and when such payments are so made, or the amounts belonging to persons to whom payment shall not be made are so deposited, the said lands shall be deemed to be condemned and taken by the United States for the public use.

Whitford v. U. S., 40 App. D. C. 14 (1913) ; 41 W. L. R. 115.

Owner can not be divested of his property until payment has been made. Macfarland v. Elverson, 32 App. D. C. 81, cited under sec. 483.

SEC. 487. JURY.—If any of the parties interested, or the guardian ad litem appointed for any such person who may be under a disability, shall be dissatisfied with the appraisement of the commissioners, the court shall order the jury commission to draw from the special box the names of as many persons as the court may direct, and from among the persons so drawn the court shall appoint a jury of seven capable and disinterested persons to meet and view the premises, giving the parties interested at least six days' notice of the time and place of meeting.

Act of April 19, 1920 (41 Stat. L. pt. 1, p. 566), repealing 31 Stat. L. p. 1189. Whitford v. U. S., 40 App. D. C. 14 (1913) ; 41 W. L. R. 115.

SEC. 488. BENEFITS.—The marshal shall summon the jury and administer an oath to them that they will, without favor or partiality to anyone, to the best of their judgment, decide what damage each owner will sustain by reason of the taking of his land for any of the objects aforesaid. In making their decision, the jury shall take into consideration, whenever a part only is taken, the benefit to the remainder of the tract, and shall give their verdict accordingly.

SEC. 489. The jury having been upon the premises and, after hearing the parties, having assessed the damages, shall make out a written verdict, to be signed by them, or a majority of them, and attested by the marshal, who shall return the same to the court, where it shall be recorded. The verdict of the jury may be excepted to by any party interested, and may be set aside by the court for good reasons, and a new jury directed to be summoned.

SEC. 490. If the finding of the commissioners to appraise should not be objected to by the parties interested, and, in cases of condemnation for the use of the District, the Commissioners of the District are satisfied therewith, or if the verdict of the jury is confirmed by the court and is satisfactory to the Commissioners of the District, the said Commissioners shall pay the amount awarded by the jury out of the appropriation made therefor, or deposit the same in the same manner as directed in section four hundred and eighty-six, aforesaid, and thereupon the land condemned shall become and be the property of the District.

SEC. 491.—It shall be optional with the Commissioners to abide by the verdict of the jury and occupy the land appraised by them; or, *within a reasonable time to be fixed by the court in its order confirming the verdict to*, abandon the same, without being liable to damage therefor.

32 Stat. L., pt. 1, p. 530.

36 Stat. L., pt. 1, p. 268 (Appendix, p. 546, *infra*).

SUBCHAPTER ONE

CONDEMNATION OF LAND FOR STREETS

SEC. 491a. Whenever land is needed for the opening, extension, widening, or straightening of any street, avenue, road, or highway in the District of Columbia, authorized by Congress, the Commis-

sioners of the District of Columbia may institute, in the supreme court of the District of Columbia, sitting as a district court, by petition, a proceeding in rem for the condemnation of the land needed.

Interpolated by act of April 30, 1906 (34 Stat. L. pt. 1, p. 151).

See act of March 30, 1910 (36 Stat. L., pt. 1, p. 268), p. 456 *infra*.

American Security & Trust Co. v. Rudolph, 38 App. D. C. 32 (1912); 40 W. L. R. 34 (writ of error denied in 224 U. S. 491), citing *Realty Co. v. Macfarland*, 31 App. D. C. 112, affirmed in 217 U. S. 547, *Investment Co. v. Rudolph*, 40 App. D. C. 129 (1913); 41 W. L. R. 134, affirmed in 236 U. S. 692; *Wiegand v. Siddons*, 41 App. D. C. 130 (1913); 42 W. L. R. 2.

SEC. 491b. Such petition shall contain a particular description of the land to be condemned and the names of the owners of the fee of said land and their residences, so far as the same may be ascertained, together with a plan of the land to be taken.

Interpolated by act of April 30, 1906 (34 Stat. L. pt. 1, p. 151).

See cases cited under section 491a.

SEC. 491c. The said court shall cause public notice of not less than twenty days to be given of the institution of such proceeding, by advertisement in three daily newspapers published in the District of Columbia, which notice shall warn and require all persons having any interest in the proceeding to appear in court at a day to be named in said notice and to continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits by the jury herein provided for; and in addition to such public notice said court shall cause a copy of said notice to be served by the United States marshal for the District of Columbia, or his deputies, upon such owners of the land to be condemned as can be found by said marshal, or his deputies, within the District of Columbia and upon the tenants and occupants of the same. The said court shall appoint a guardian ad litem for any person interested in the proceeding who may be under disability.

Interpolated by act of April 30, 1906 (34 Stat. L. pt. 1, p. 151).

See also 38 Stat. L. pt. 1, p. 213, and 39 Stat. L. pt. 1, p. 21.

See cases cited under section 491a.

"It is clear that the statute requires both general notice by publication and personal service of the notice by the marshal upon such owners of land to be condemned as can be found within the District of Columbia. * * * The requirements of the statute as to notice are jurisdictional and must be strictly followed." *Edwards v. Brownlow*, 50 App. D. C. 331 (1921); 49 W. L. R. 211, 262, citing *Brown v. Macfarland*, 19 App. D. C. 525; *Fay v. Macfarland*, 32 App. D. C. 295; and *Lynchburg Investment v. Rudolph*, 40 App. D. C. 129, affirmed in 236 U. S. 692.

SEC. 491d. After the return of the marshal and the filing of proof of publication of the notice provided for in the next preceding section said court shall order the jury commission to draw from the special box the names of as many persons as the court may direct, and from among the persons so drawn the court shall appoint a jury of five capable and disinterested persons, to which jury the court shall administer an oath or affirmation that they are not interested in any manner in the land to be condemned, and are not related to the parties interested therein, and that they will, without favor or partiality, and to the best of their judgment, ascertain the damages each owner of land to be taken may sustain by reason of the opening,

extension, widening, or straightening of said street, avenue, road, or highway, and the condemnation of the land needed for the purpose thereof, and to assess the benefits resulting therefrom as hereinafter provided.

Act of April 19, 1920 (41 Stat. L. pt. 1, p. 566), repealing 34 Stat. L. pt. 1, p. 152.

See cases cited under section 491a.

SEC. 491e. The court, before accepting the jury, shall hear any objections that may be made to any member thereof, and shall have full power and authority to pass upon any such objections, and to excuse any juror or cause any vacancy in the jury, when empaneled, to be filled; and after the jury shall have been organized and shall have viewed and examined the land and premises affected by the condemnation proceeding they shall proceed, in the presence of the court, to hear and receive such evidence as may be offered or submitted on behalf of the District of Columbia and by any person or persons having any interest in the proceeding. When the hearing is concluded, the jury, or a majority of them, shall return to the court, in writing, their verdict, setting forth the amount found to be due and awarded to the owners of the land to be condemned as damages by reason of said opening, extension, widening, or straightening of said street, avenue, road, or highway, under the provisions hereof, and the lots, pieces, or parcels of land benefited by said opening, extension, widening, or straightening, and the amounts of the assessments for the benefits against the same.

Interpolated by act of April 30, 1906 (34 Stat. L. pt. 1, p. 152).

Briggs v. Brownlow, 49 App. D. C. 345 (1920); 48 W. L. R. 451.

See cases cited under section 491a.

SEC. 491f. If a part only of any lot, piece, or parcel of ground is to be condemned, the jury, in determining its value, shall not take into consideration any benefits that may accrue to the remainder thereof from said opening, extension, widening, or straightening of said street, avenue, road, or highway, but such benefits shall be considered by the jury in determining what assessment shall be made or levied against such part of such lot, piece, or parcel of land as may not be taken as hereinbefore provided.

Interpolated by act of April 30, 1906 (34 Stat. L. pt. 1, p. 152).

Briggs v. Brownlow, 49 App. D. C. 345 (1920); 48 W. L. R. 451.

See cases cited under section 491a.

SEC. 491g. That of the amount found to be due and awarded as damages for and in respect of the land to be condemned for said opening, extension, widening, or straightening, plus the costs and expenses of the proceeding, such amount shall be assessed by the jury as benefits, and to the extent of such benefits against the lots, pieces, or parcels of land on each side of the street, avenue, road, or highway to be opened, extended, widened, or straightened, and against any and all other lots, pieces, or parcels of land which the jury may find will be benefited by the opening, extension, widening, or straightening, as the jury may find said lots, pieces, or parcels of land will be benefited; and in determining the amounts to be assessed against said lots, pieces, or parcels of land the jury shall take into consideration the respective situations and topographical conditions of said lots, pieces, or parcels of land, and the benefits and advantages they may

severally receive from the opening, extension, widening, or straightening of the street, avenue, road, or highway. And where part of any lot, piece, parcel, or tract of land has been dedicated for the opening, extension, widening, or straightening of the street, avenue, road, or highway, the jury, in determining whether the remainder of said lot, piece, parcel, or tract is to be assessed for benefits, and the amount of benefits, if any, to be assessed thereon, shall also take into consideration the fact of such dedication and the value of the land so dedicated. If the total amount of the damages awarded by the jury and the costs and expenses of the proceeding be in excess of the total amount of the assessments for benefits, such excess shall be borne and paid by the District of Columbia.

Act of Feb. 25, 1907 (34 Stat. L. pt. 1, p. 930), repealing act of April 30, 1906, 34 Stat. L. pt. 1, p. 151.

*See cases cited under section 491 a, c, and e.

SEC. 491h. The said court shall hear and determine any objections or exceptions that may be filed to any verdict of the jury and shall have power to vacate and set any verdict aside, in whole or in part, when satisfied that it is unjust or unreasonable, in which event the court shall order the jury commission to draw from the special box the names of as many persons as the court may direct, and from among the persons so drawn the court shall thereupon appoint a new jury of five capable and disinterested persons, who shall proceed to ascertain the damages or assess the benefits, or both, as the case may be, in respect of the land as to which the verdict may be vacated, as in the case of the first jury: *Provided*, That if vacated in part, the residue of the verdict as to the land condemned or assessed shall not be affected thereby: *And provided further*, That the objections or exceptions to the verdict shall be filed within twenty days after the return of the verdict to the court.

Act of April 19, 1920 (41 Stat. L. pt. 1, p. 566), repealing act of April 30, 1906, 34 Stat. L. pt. 1, p. 153.

SEC. 491i. When the court shall have finally ratified and confirmed the verdict of a jury condemning the land needed for the opening, extension, widening, or straightening of the street, avenue, road, or highway, the amounts of money found to be due and awarded to the owners of the land condemned shall be paid to such owners by the disbursing officer of the District of Columbia from moneys advanced to him by the Secretary of the Treasury, upon requisitions of the Commissioners of said District, as provided by law.

Act of April 30, 1906 (34 Stat. L. pt. 1, p. 153).

SEC. 491j. When finally ratified and confirmed by the court, the several assessments authorized to be made or levied by the jury shall severally be a lien upon the land assessed, and shall be collected as special-improvement taxes in the District of Columbia, and shall be payable in five equal annual installments, with interest at the rate of four per centum per annum from and after sixty days after the confirmation of the verdict of the jury. In all cases of payments the accounting officers shall take into account the assessments for benefits

and the award of damages, and shall pay only such part of the award in respect of any lot, piece, or parcel of land condemned as may be in excess of the assessment for benefits against the part of such lot, piece, or parcel of land not taken, and there shall be credited on said assessment the amount of said award not in excess of said assessment.

Act of April 30, 1906 (34 Stat. L. pt. 1, p. 153).

See cases cited under sections 691a-c-e—

SEC. 491k. Said court shall have full power and authority, at any time, to allow amendments in form or substance in any petition, process, verdict, record, or other proceeding, or in the description of property proposed to be condemned or of property assessed for benefits whenever such amendment will not interfere with the substantial rights of the parties interested.

Act of April 30, 1906 (34 Stat. L. pt. 1, p. 153).

SEC. 491l. Each juror shall receive as compensation for his services the sum of five dollars per day for every day necessarily employed in the performance of the duties herein prescribed.

Act of April 30, 1906 (34 Stat. L. pt. 1, p. 153).

SEC. 491m. Any party aggrieved by any final order of the court may appeal therefrom to the court of appeals of the District of Columbia; but no appeal from any order of the court confirming any award of damages or assessment for benefits, nor any other proceeding that may be taken by any person, at law or in equity, against the confirmation of any award of damages or any assessment for benefits shall delay or prevent the payment of the damages awarded to other persons in respect of the property condemned, or delay or prevent the taking of the property sought to be condemned, or delay or prevent the opening, extension, widening, or straightening of the street, avenue, road, or highway.

Act of April 30, 1906 (34 Stat. L. pt. 1, p. 151).

Also *Macfarland v. Poulos*, 32 App. D. C. 558 (1909); 37 W. L. R. 184.

SEC. 491n. In case any of the owners of land heretofore or hereafter condemned for public use, whether under the provisions of said Code or by virtue of any special or general Act of Congress, are under disability or can not be found, or neglect or refuse to receive the money awarded to them; or in case the record is imperfect or the title to the property is in dispute or uncertain, the money due the owners of the property for damages for land taken may be deposited in the registry of the supreme court of the District of Columbia, for the use of the rightful owners without cost or expense to said District; and thereupon the title to the land condemned shall become vested in the District of Columbia.

Hereafter in all proceedings for the opening, extension, widening, or straightening of alleys and minor streets and for the establishment of building lines in the District of Columbia the jury of condemnation shall not be restricted as to the assessment area, but shall assess the entire amount awarded as damages plus the costs and expenses of the proceedings as benefits upon any and all lots, parts

of lots, pieces or parcels of land which they may find will be benefited by the opening, extension, widening, or straightening of the alley or minor street, or by the establishment of the building line as they may find said lots, parts of lots, pieces or parcels of land will be benefited.

Act of December 18, 1908 (35 Stat. L. pt. 1, p. 582), repealing 34 Stat. L. pt. 1, p. 151.

The District of Columbia appropriation act of March 3, 1917 (39 Stat. L. pt. 1, p. 1017), contains the provisions set forth in the last paragraph.

Act of March 3, 1917 (39 Stat. L., pt. 1, p. 1017) enacting italicized paragraphs.

CHAPTER SIXTEEN

CONVEYANCING

SUBCHAPTER ONE

DEEDS OF REAL PROPERTY

SEC. 492. ESTATES.—No estate of inheritance, or for life, or for a longer term than one year, in any real property, corporeal or incorporeal, in the District of Columbia, or any declaration or limitation of uses in the same, for any of the estates mentioned, shall be created or take effect, except by deed signed and sealed by the grantor, lessor, or declarant, *or by will*.

See sections 498, 1034, 1116.

32 Stat. L. pt. 1, p. 531.

“Where one of two contracting parties has been induced or allowed to alter his position on the faith of a contract within the statute, to such an extent that it would be fraud on the part of the other party to set up its invalidity, courts of equity hold that the clear proof of the contract and of the acts of part performance will take the case out of the operation of the statute, if the acts of part performance were clearly such as to show that they are properly referable to the parol agreement.” *Kresge v. Crowley*, 47 App. D. C. 13 (1917); 45 W. L. R. 755.

A lease for eight years (with privilege of renewal) by one tenant in common is void as to the other tenants who did not sign and seal the lease. The acknowledgment of the lessor was not and could not have been made as agent or attorney for her coowners. *Velati v. Dante*, 39 App. D. C. 372 (1912); 41 W. L. R. 40, certiorari denied 227 U. S. 679. No amount of acquiescence by the remaining tenants could affect their rights, in the absence of power in the lessor to act as trustee for them, in the execution of the lease. *Ib.* Where lessor had only a life estate, the rights under the lease expired with her, and the remainder men, by accepting rent after her death, are not estopped to defend against the covenant of renewal in the lease. *Ib.*

SEC. 493. ACKNOWLEDGMENT.—*Acknowledgment of deeds* may be made in the District of Columbia before any judge of any of the courts of said District, the clerk of the supreme court of the District, or any justice of the peace or notary public, or the recorder of deeds of said District, and the certificate of the officer taking the acknowledgment shall be to the following effect:

I, A B, a justice of the peace (or other officer authorized) in and for the District of Columbia, do hereby certify that C D, party to a certain deed bearing date on the ---- day of -----, and hereto annexed, personally appeared before me in said District, the said C D being personally well known to me as (or proved by the oath of credible witnesses to be) the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and seal this ---- day of -----

A B. [Seal.]

32 Stat. L. pt. 1, p. 531.

See section 562.

R. S. D. C., sec. 441, Comp. Stat. D. C. p. 490, sec. 2.

"The true view is that the certificate of acknowledgment is *prima facie* proof of the facts it contains, if within the officer's range, but is open to rebuttal, between the parties, by proof of gross concurrent mistake or fraud. In favor of purchasers for valuable consideration without notice, it is conclusive as to all matters which it is the duty of the acknowledging officer to certify, if he has jurisdiction. As to all other persons it is open to dispute." *Ford v. Ford*, 27 App. D. C. 401 (1906); 34 W. L. R. 435 (quoted with approval, from *Wharton on Evidence*, vol. 2, 3d ed., sec. 1052). The evidence to impeach the acknowledgment to a deed for fraud must be clear and convincing. *Ib.* *Quaere*: Whether the act of a notary in taking an acknowledgment is a judicial act or merely ministerial. (See, however, *Hitz v. Jenks*, 123 U. S. 297 (1887).)

Quaere: Whether an acknowledgment is sufficient if the words "do hereby certify" as recited in the statute, are omitted. *Ohio Bank v. Berlin*, 26 App. D. C. 218 (1905); 33 W. L. R. 726. Also, as to omission of formal statement that grantor acknowledged "the same to be his act and deed." *Ib.* A deed, however, is fatally defective which omits to state that the grantor was personally known to the officer or that his identity had been proved by the oath of credible witnesses, and which fails to identify the instrument by recital of its date. The recordation of an instrument so acknowledged is erroneous and of no effect as constructive notice. *Ib.*

See *Fitzgerald v. Wynne*, 1 App. D. C. 107 (1893); 21 W. L. R. 611.

SEC. 494. RELEASE OF DOWER.—If the wife of the party executing said deed, being not less than eighteen years of age, shall desire to release her dower in the property conveyed, she may do so either by joining in the same deed or by a separate deed, wherever executed, signed, sealed, and acknowledged by her in the same manner as provided in the preceding section, and her acknowledgment shall be certified in like manner.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 531), repealing 31 Stat. L. p. 1189.

When a wife joins in a mortgage, she retains her dower in the property, subject to the mortgage. *Follansbee v. Follansbee*, 1 App. D. C. 326 (1893); 21 W. L. R. 763. "The relinquishment of an inchoate right of dower which a married woman makes by joining in a deed with her husband, can operate against her only by way of estoppel." *Ib.* If the conveyance or instrument in which the wife joins is void, or ceases for any reason to operate, and no title has passed, or none remained, the release does not, after that, operate against the wife. *Ib.*

Hitz v. Jenks, 123 U. S. 297 (1887).

SEC. 495. ACKNOWLEDGMENT OUT OF DISTRICT.—When any deed or contract under seal is to be acknowledged out of the District of Columbia, but within the United States, the acknowledgment may be made before any judge of a court of record and of law, or any chancellor of a State, any judge or justice of the Supreme, circuit, or Territorial courts of the United States, any justice of the peace or notary public: *Provided*, That the certificate of acknowledgment aforesaid, made by any officer of the State or Territory not having a seal, shall be accompanied by the certificate of the register, clerk, or other public officer that the officer taking said acknowledgment was in fact the officer he professed to be.

See section 557; also, p. 606, Appendix.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 531), repealing 31 Stat. L. p. 1189.

R. S. D. C., sec. 443, Comp. Stat. D. C., p. 491, sec. 5.

SEC. 496. Deeds made in a foreign country may be acknowledged before any judge or notary public, or before any secretary of legation or consular officer, or acting consular officer of the United States,

as such consular officer is described in section sixteen hundred and seventy-four of the Revised Statutes of the United States; and when the acknowledgment is made before any other officer than a secretary of legation or consular officer or acting consular officer of the United States, the official character of the person taking the acknowledgment shall be certified in the manner prescribed in the last preceding section.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 531), repealing 31 Stat. L. p. 1189. R. S. D. C., secs. 444, 445, Comp. Stat. D. C. p. 491, secs. 6-7.
See Appendix, p. 606.

SEC. 497. DEEDS OF CORPORATIONS.—The deed of a corporation shall be executed by having the seal of the corporation attached and being signed with the name of the corporation, by its president or *other* officer, and shall be acknowledged as the deed of the corporation by an attorney appointed for that purpose, by a power of attorney embodied in the deed or by one separate therefrom, under the corporate seal, to be annexed to and recorded with the deed.

Act of June 30, 1902 (32 Stat. L. p. 531), changing words "chief officer" to read "other officer."

SEC. 498. ACKNOWLEDGMENT BY ATTORNEY.—No deeds of conveyance of either real or personal estate by individuals shall be executed or acknowledged by attorney.

As to when a lease for a longer period than one year will be enforced, notwithstanding the fact that it is signed by an attorney in violation of section 498, see *Kresge v. Crowley*, 47 App. D. C. 13 (1917); 45 W. L. R. 755.

Velati v. Dante, 39 App. D. C. 372 (see sec. 492), certiorari denied 227 U. S. 679.

As to transfer of land by attorney prior to adoption of Code, see *Williams v. Paine*, 7 App. D. C. 116 (1895); 23 W. L. R. 626, affirmed in 169 U. S. 55; *Herner v. Matthews*, 4 App. D. C. 380 (1894); 22 W. L. R. 745.

SEC. 499. WHEN DEEDS TO TAKE EFFECT.—Any deed conveying real property in the District, or interest therein, or declaring or limiting any use or trust thereof, executed and acknowledged and certified as aforesaid and delivered to the person in whose favor the same is executed, shall be held to take effect from the date of the delivery thereof, except that as to creditors and subsequent bona fide purchasers and mortgagees without notice of said deed, and others interested in said property, it shall only take effect from the time of its delivery to the recorder of deeds for record.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 531), repealing 31 Stat. L. p. 1286.
Act of April 29, 1878 (20 Stat. L. p. 39).

"The act of delivery is essential to the existence of any deed, bond, or note. Although drawn and signed, so long as it is undelivered, it is a nullity; not only does it take effect only by delivery, but also only on delivery." *Atlas Portland Cement Co. v. Fox*, 49 App. D. C. 292 (1920); 48 W. L. R. 294, quoting from 132 U. S. 340, 353. "The statute is merely one of notice. As stated by Chief Justice Alvey, in *Fitzgerald v. Wynne*, 1 App. D. C. 107, 21 W. L. R. 611: 'The great object of the statutes in requiring deeds of conveyance to be acknowledged and recorded is to prevent the practice of fraud upon creditors and purchasers—to furnish the means of notice and protection to innocent third parties.' To prevent fraud and furnish notice when? At the time the credit is extended or the claim reduced to judgment, on the strength of the debtor's apparent title. Not before the title was acquired, but during its record existence." *Ib.* A judgment lien will attach to after-acquired real estate by the judgment debtor. *Ib.* "But the lien will only attach to after-acquired real estate to the extent of the actual title which the debtor has therein."

Ib. This statute includes judgment creditors. Ib. But, in the absence of fraud, applies only to cases where the credit has been extended or judgments have been secured while the record title remained in the debtor, citing, with approval, *Bank v. Elsminger*, 35 App. D. C. 51; 38 W. L. R. 252.

"A purchaser with notice of a prior equity superior to the rights of his grantor takes his place and is bound to do that which in equity his grantor was bound to do." *Kresge v. Crowley*, 47 App. D. C. 13 (1917); 45 W. L. R. 755.

The delivery of a deed for record is not a prerequisite to its validity as against creditors having actual notice of its existence. *Staples v. Warren*, 46 App. D. C. 363 (1917); 45 W. L. R. 262, *distinguishing* *Dulaney v. Morse*, 39 App. D. C. 523; 41 W. L. R. 262 (as to a conveyance constituting a preference under the bankruptcy act).

This section superseded prior recording act and applies to all instruments unrecorded at time of its passage. *Dulaney v. Morse*, *supra*.

"The requirement consists in the duty imposed upon the grantee to record, or suffer the penalty prescribed * * * of having the instrument * * * declared a nullity. * * * Though optional with the grantee as to certain parties as to innocent purchasers and creditors it is required for his protection." *Dulaney v. Morse*, *supra*.

Judgment liens extend to all lands "held under apparently perfect legal title by the judgment debtor at the time of the rendition of the judgment, notwithstanding the same might be subject to some secret trust, capable of being placed upon record." *Bank v. Elsminger*, 35 App. D. C. 51 (1910); 38 W. L. R. 252. *Quaere*: Whether a resulting or constructive trust, incapable of record, and in the assertion of which there has been no laches, would yield to such a lien. Judgment lien is superior to prior unrecorded title or interest. *Ib.*, citing *Hitz v. Bank*, 111 U. S. 722; *Manogue v. Bryant*, 15 App. D. C. 245; 27 W. L. R. 478.

"No particular form or ceremony is essential to the effective delivery of a deed. Words or acts showing an intention that the deed shall be complete and operative constitute a good delivery." *Walker v. Warner*, 31 App. D. C. 76 (1908); 36 W. L. R. 262. Possession by the grantee is *prima facie* evidence of delivery. *Ib.* (See also *Carusi v. Savary*, 6 App. D. C. 330 (1895); 23 W. L. R. 374. "A deed can not be delivered to the grantee upon a condition not expressed in the instrument." *Ib.*, citing *Newman v. Baker*, 10 App. D. C. 197; *Bieber v. Gans*, 24 App. D. C. 517. "The fact that a deed once delivered is withheld from record for a long period or until the death of the grantor, either at or without the request of the latter, has no effect to impair its effect as a conveyance of title or to operate any extinguishment." *Ib.*, citing *Fitzgerald v. Wynne*, 1 App. D. C. 107; *Bunten v. Trust Co.*, 24 App. D. C. 226.

Trustee in bankruptcy does not, under our recording statutes, take the property as an innocent purchaser, but "subject to all equities, liens, or encumbrances, whether created by operation of law or by the bankrupt, which existed against the property in the hands of the bankrupt." *Crosby v. Ridout*, 27 App. D. C. 481 (1906); 34 W. L. R. 320. "A judgment, being but a general lien, must be subordinated to the superior equities of a prior specific lien * * *. The judgment creditor stands in the place of his debtor, and can only take the property of his debtor subject to the equitable charges to which it was justly liable in the hands of the debtor at the time of the rendition of the judgment." *Ib.* "Creditors mentioned (in sec. 499) mean creditors who in the interval of time have fastened upon the property for the payment of their debts, and not general creditors." *Ib.* Recordation of deed of trust from a stranger to the record title is not constructive notice that the grantor is the grantee of last record owner. *Ib.*

A judgment creditor who files a bill in equity to sell the equitable interest of the judgment debtor in real property, has priority over a grantee claiming under a deed executed before (but not filed for record until after) the filing of the bill. *Ohio Bank v. Berlin*, 26 App. D. C. 218 (1905); 33 W. L. R. 726.

"One is not required to take notice of everything which is put upon the records of the Land Office, even concerning his own property. One who has acquired title is entitled to rest upon his rights; nothing afterwards put upon record, otherwise than by himself or his procurement, can legally affect those rights." *Armstrong v. Ashley*, 22 App. D. C. 368 (1903); 31 W. L. R. 439, affirmed 204 U. S. 272. "One who deals with land is required to take notice of all conveyances on record at the time at which he deals with it." *Ib.* See also *Sis v. Boorman*, 11 App. D. C. 116; 25 W. L. R. 431.

As to construction of act of April 29, 1878, see *Manogue v. Bryant*, 15 App. D. C. 245 (1899); 27 W. L. R. 478.

"The record of an instrument that is not permitted by law to be recorded, or that is not proved for record as required by law, is constructive notice to no one." *Clark v. Harmer*, 5 App. D. C. 114 (1895); 23 W. L. R. 126.

As to effect of errors in recordation, see *Armstrong v. Ashley*, 22 App. D. C. 368 *supra*.

SEC. 500. When two or more deeds of the same property are made to bona fide purchasers for value without notice, the deed or deeds which are first recorded according to law shall be preferred.

R. S. D. C., sec. 448, Comp. Stat. D. C., p. 491, sec. 10.

SEC. 501. BONDS AND CONTRACTS.—Any title bond or other written contract in relation to land may be acknowledged, certified, and recorded in the same manner and with like effect, as to notice as deeds for the conveyance of land.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 531), repealing 31 Stat. L. p. 1189. R. S. D. C., sec. 449, Comp. Stat. D. C., p. 492, sec. 11.

SEC. 502. INTERPRETATION.—No words of inheritance shall be necessary in a deed or will to create a fee simple estate; but every conveyance or devise of real estate shall be construed and held to pass a fee simple estate or other entire estate of the grantor or testator, unless a contrary intention shall appear by express terms or be necessarily implied therein.

SEC. 503. The word "grant," the phrase "bargain and sell," or any other words purporting to transfer the whole estate shall be construed to pass the whole estate and interest in the property described, unless there be limitations or reservations showing a different intent.

Act of June 30, 1902 (32 Stat. L. 531).

SEC. 504. In any deed or will of real or personal estate in the District of Columbia, hereafter executed, the words "die without issue," or the words "die without leaving issue," or the words "have no issue," or other words which may import either a want or failure of issue of any person in his lifetime, or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear in the instrument.

Cited but not construed in *Herrell v. Herrell*, 47 App. D. C. 30 (1917); 45 W. L. R. 747.

SEC. 505. When, in any deed, the word "covenant" is used, such word shall have the same effect as if the covenant was expressed to be by the covenantor, for himself, his heirs, devisees, and personal representatives, and shall be deemed to be with the grantee or lessee, his heirs, devisees, personal representatives, and assigns.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 531), repealing 31 Stat. L. p. 1189.

Similar restrictive covenants contained in deeds from the owner of a subdivision to all purchasers, inure to the benefit of the several purchasers and subsequent owners thereof. *McNeil v. Gary*, 40 App. D. C. 397 (1913); 41 W. L. R. 325.

SEC. 506. A covenant by the grantor, in a deed conveying real estate, "that he will warrant generally the property hereby conveyed," or a grant of real estate in which the granting words are

followed by the words "with general warranty," shall have the same effect as if the grantor had covenanted that he, his heirs, devisees, and personal representatives will warrant and defend the said property unto the grantee, his heirs, devisees, personal representatives, and assigns against the claims and demands of all persons whomsoever.

SEC. 507. A covenant by a grantor, in a deed conveying real estate, "that he will warrant specially the property hereby conveyed," or a grant of real estate in which the granting words are followed by the words "with special warranty," shall have the same effect as if the grantor had covenanted that he, his heirs, devisees, and personal representatives will forever warrant and defend the said property unto the grantee, his heirs, devisees, personal representatives, and assigns against the claims and demands of the grantor and all persons claiming or to claim by, through, or under him.

SEC. 508. A covenant by the grantor, in a deed of land, "that the said grantee shall quietly enjoy said land," shall have the same effect as if he had covenanted that the said grantee, his heirs, and assigns, shall, at any and all times hereafter, peaceably and quietly enter upon, have, hold, and enjoy the land conveyed by the deed or intended to be so conveyed, with all the rights, privileges, and appurtenances thereunto belonging, and to receive the rents and profits thereof, to and for his and their use and benefit, without any eviction, interruption, suit, claim, or demand whatsoever by the said grantor, his heirs or assigns, or any other person or persons whatever.

SEC. 509. A covenant by a grantor, in a deed of land, "that he has done no act to incumber said land," shall be construed to have the same effect as if he had covenanted that he had not done or executed or knowingly suffered any act, deed, or thing whereby the land and premises conveyed, or intended so to be, or any part thereof, are or will be charged, affected, or incumbered in title, estate, or otherwise.

SEC. 510. A covenant by a grantor, in a deed of land, "that he will execute such further assurances of said land as may be requisite," shall have the same effect as if he had covenanted that he, his heirs or devisees, will, at any time, upon any reasonable request, at the charge of the grantee, his heirs or assigns, do, execute, or cause to be done and executed, all such further acts, deeds, and things, for the better, more perfectly and absolutely conveying and assuring the lands and premises conveyed unto the grantee, his heirs and assigns, as intended to be conveyed, as by the grantee, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably devised, advised, or required.

[SEC. 511. IMPLIED COVENANTS.—No covenant shall be implied in any conveyance of real estate, whether such conveyance contains special covenants or not.]

Repealed by act of June 30, 1902 (32 Stat. L. pt. 1, p. 532).

SEC. 512. WHAT ESTATES MAY BE CONVEYED BY DEED.—Any interest in or claim to real estate, whether entitling to present or future possession and enjoyment, and whether vested or contingent, may be disposed of by deed or will, and any estate which would be good as an executory devise, may be created by deed.

See section 1025.

32 Stat. L. pt. 1, p. 532.

SEC. 513. CONVEYANCE OF LAND HELD ADVERSELY.—Any person claiming title to land may convey his interest in the same, notwithstanding there may be an adverse possession thereof.

SEC. 514. ABSENCE OF ACKNOWLEDGMENT.—No deed or conveyance of squares or lots of public land in the city of Washington, made in pursuance of law prior to the adoption of this Code by the commissioner of public buildings or any other authorized officer, shall be deemed invalid in law for the want of an acknowledgment by the commissioner or other authorized officer before such judicial officers, as deeds of real property made between individuals are required by law to be acknowledged.

32 Stat. L. pt. 1, p. 532.

R. S. D. C., sec. 458; Comp. Stat. D. C., p. 494, sec. 21.

SEC. 515. DEFECTIVE ACKNOWLEDGMENTS.—All deeds and acknowledgments recorded in the land records of the District prior to the adoption of this code of any of the following designated classes shall, in favor of parties in actual possession, claiming under and through such deeds, be deemed and held and are declared to be of the same effect and validity to pass the fee simple or other estate intended to be conveyed, and bar dower in the real estate therein mentioned, as if such deeds had in all respects been executed, acknowledged, proved, certified, and recorded according to law, namely:

First. All deeds which have been executed and acknowledged by married women, their husbands having signed and sealed the same, for conveying any real estate, or interest therein, situated in the District;

Second. All acknowledgments of deeds which have been made by married women, whether they have executed the deed or not, for the purpose of releasing their claims to dower in the lands described therein, situated in the District, in which acknowledgments the form prescribed by law has not been followed;

Third. All deeds which have been executed and acknowledged by an attorney in fact duly appointed for conveying real estate situated in the District;

Fourth. All deeds executed and acknowledged, or only acknowledged by such attorney in fact, for conveying real estate situated in the District, as to which the acknowledgment was made before officers different from those before whom proof of the power of attorney was made, and as to which the power of attorney was proved before only one justice of the peace;

Fifth. All deeds for the purpose of conveying land situated in the District, acknowledged out of the District, before a judge of a United States court, or before two aldermen of a city, or the chief magistrate of a city, or before a notary public or other officer;

Sixth. All deeds for the purpose of conveying land situated in the District, acknowledged by an attorney in fact, duly appointed, or by an officer of a corporation, duly authorized, who has acknowledged the same to be his act and deed, instead of the act and deed of the grantor or of the corporation; and

Seventh. All deeds for the purpose of conveying land situated in the District to which there is not annexed a legal certificate as to the official character of the officer or officers taking the acknowledgment.

R. S. D. C., sec. 459; Comp. Stat. D. C., p. 494, sec. 22.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 532).

Hevner v. Matthews, 4 App. D. C. 380 (1894); 22 W. L. R. 745.

Williams v. Paine, 169 U. S. 55 (1898), affirming 7 App. D. C. 116.

SEC. 516. ACKNOWLEDGMENTS BY MARRIED WOMEN.—In all cases mentioned in the preceding section the certificate of acknowledgment by a married woman *made prior to April tenth, eighteen hundred and sixty-nine*, must show that the acknowledgment was made "apart" or "privily" from her husband, or use some other term importing that her acknowledgment was made out of his presence, and also that she acknowledged or declared that she willingly executed or that she willingly acknowledged the deed, or that the same was her voluntary act, or to that effect.

32 Stat. L. pt. 1, p. 532.

R. S. D. C., sec. 460; Comp. Stat. D. C. p. 495, sec. 23.

【SEC. 517. DOWER.—Any acknowledgment made by a married woman of any deed executed by her husband, and recorded as mentioned in section five hundred and fifteen, shall be good and effectual to bar all claim on her part to dower in the lands described therein, situated in the District, although she shall not have executed the same.】

Repealed by act of June 30, 1902 (32 Stat. L. pt. 1, p. 532).

SEC. 518. POWER OF ATTORNEY BY MARRIED WOMAN.—When the power of attorney mentioned in section five hundred and fifteen *was* executed by a married woman, the same shall be effectual and sufficient if there is such an acknowledgment of the same as would be sufficient, under the provisions of *section five hundred and sixteen*, to pass her estate and interest therein were she a party executing the deed of conveyance.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 532).

R. S. D. C., sec. 462, Comp. Stat. D. C., p. 495, sec. 25.

Williams v. Paine, 169 U. S. 55 (1898); affirming 7 App. D. C. 116.

SEC. 519. RECORD OF DEEDS AS EVIDENCE.—The record or a copy thereof of any deed recorded, as mentioned in sections five hundred and fifteen and five hundred and sixteen, shall be evidence thereof, in the same manner and shall have the same effect as if such deed had been originally executed, acknowledged, and recorded according to law.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 532), repealing 31 Stat. L. p. 1189.

R. S. D. C., sec. 463; Comp. Stat. D. C., p. 495, sec. 26

SEC. 520. *In all cases of deeds executed and acknowledged prior to the adoption of this code, the acts of Congress approved May thirty-first, eighteen hundred and thirty-two, and April twentieth, eighteen hundred and thirty-eight, in reference to the acknowledgment and recording of deeds of lands situated in the District, shall be taken and construed as cumulative with the acts of Maryland on the same subject in force in the District at the passage thereof, and an acknowledgment made and certified in compliance with any one of said acts, and before any officer authorized by either of said acts to take an acknowledgment, whether in or out of the District, shall be good and effectual.*

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 532).

R. S. D. C. sec. 464; Comp. Stat. D. C. p. 495, sec. 27.

SUBCHAPTER TWO

MORTGAGES AND DEEDS OF TRUST OF REAL PROPERTY

SEC. 521. TO BE RECORDED.—Mortgages and deeds of trust to secure debts, conveying any estate in land, shall be executed and may be acknowledged and recorded in the same manner as absolute deeds; and they shall take effect both as between the parties thereto and as to others, bona fide purchasers and mortgagees and creditors, in the same manner and under the same conditions as absolute deeds.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 532), repealing 31 Stat. L. p. 1189.
See section 499.

Deed declared a mortgage. *Dulany v. Morse*, 39 App. D. C. 523 (1913); 41 W. L. R. 52.

SEC. 522. ESTATE OF TRUSTEE.—The legal estate conveyed to a mortgagee, his heirs and assigns, or to a trustee to secure a debt, his heirs and assigns, shall be construed and held to be a qualified fee simple, determinable upon the release of the mortgage or deed of trust, as hereinafter provided, or the appointment of a new trustee by judicial decree for the causes hereinafter mentioned: *Provided, That nothing in this section contained shall prevent the passing of an absolute and unqualified estate in fee-simple under a deed made by the mortgagee or trustee in pursuance of the powers conferred by the mortgage or deed of trust.*

See section 989.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 532).

Railway Co. v. Railroad Co., 23 App. D. C. 587 (1904); 32 W. L. R. 309, affirmed in 199 U. S. 247.

"The estate of the trustee is a naked legal title without any beneficial interest whatever * * * and they have always held the legal title in strict subordination to the beneficial interest of the debtor and creditor in the transaction." *Marshall v. Kraak*, 23 App. D. C. 129 (1904); 32 W. L. R. 130. See section 538, infra, re removal of trustee.

Smith v. Sullivan, 20 App. D. C. 553 (1902); 31 W. L. R. 2, distinguishing *Wilkes v. Wilkes*, 18 App. D. C. 90; 29 W. L. R. 261.

Willis v. Eastern Trust Co., 169 U. S. 295 (1898).

Mortgagee out of possession has no such interest as will permit him to have partition; "much less is the beneficiary under a deed of trust entitled to have partition; for he has no estate whatever, and no possibility even of a right of possession. Nor has the trustee in the deed any such right * * *." *Sis v. Boorman*, 11 App. D. C. 116 (1897); 25 W. L. R. 431.

As to powers, duties, and discretion of trustees under deeds of trust, see *Wheeler v. McBlair*, 5 App. D. C. 375 (1895); 23 W. L. R. 153, affirmed in 172 U. S. 643, citing with approval *Anderson v. White*, 2 App. D. C. 408, which is also cited with approval in *Smith v. Jackson*, 48 App. D. C. 565; 47 W. L. R. 226.

SEC. 523. HOW TO BE RECORDED.—It shall be the duty of the recorder of deeds to record all such mortgages and deeds of trust in the same manner as absolute deeds.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 532), repealing 31 Stat. L. p. 1189.

[SEC. 524. ASSIGNEES.—The assignee or indorsee of any note, bond, or other instrument binding to the payment of money, secured by any mortgage or deed of trust, shall have the same benefit of said mortgage or deed of trust, and shall be entitled to the same remedies for enforcing or foreclosing the same that the original creditor named therein would have in the absence of any indorsement or assignment of the instrument secured.]

【SEC. 525. ASSIGNMENT.—Whenever the note or notes, bond or bonds, or other instruments for the payment of money, secured by mortgage, shall be indorsed or assigned by the original creditor holding the same, the said mortgage may also be assigned by such creditor to any person holding the notes or other instruments secured thereby, and any such assignee of said mortgage may, in like manner, assign to others.】

【SEC. 526. The said assignment may be written on the said mortgage in the following or equivalent form:

I hereby assign the within (or above) mortgage to _____ as security for the (here describe the instruments) therein mentioned, which is (or are) indorsed (or assigned) to him.

Witness my hand and seal this ____ day of _____

Witness:

_____. [Seal.]

【SEC. 527. Every such assignment provided for in section five hundred and twenty-six aforesaid may be recorded at or near the foot of the said mortgage, in the blank space directed to be reserved therefor, as aforesaid, and such record shall have the same effect as notice to all persons dealing with the property embraced in said mortgage which is allowed by law to the record of the mortgage.】

【SEC. 528. RELEASE.—A release of a mortgage may be made by the original creditor who is the holder of the note or notes or other instruments secured thereby, or by any assignee of said notes or other instruments to whom said mortgage may also have been assigned, in the following or an equivalent form:

I hereby release the above (or within) mortgage.

Witness my hand and seal this ____ day of _____

Witness:

_____. [Seal.]

And said release may be acknowledged before any officer authorized to take the acknowledgment of deeds in the following or equivalent form namely:

Acknowledged before me this ____ day of _____

C D, Notary Public.】

【SEC. 529. Said release may be written on the original mortgage, and upon said mortgage, with the release thereon written, being filed in the office of the recorder of deeds, he shall record said release in the blank space to be reserved as aforesaid, or in the margin of said record, and index the same, and said mortgage shall be retained in his office and not be allowed to be again withdrawn therefrom.】

【SEC. 530. Every person whose property is subject to a mortgage given to secure a note or notes, bond or bonds, or other instruments binding to the payment of money, shall be entitled, on payment or tender of the full amount of the debt, at or after its maturity, to the creditor entitled to the same, if he is the original creditor, or is the assignee of said mortgage, to have said mortgage surrendered to him, unless the same shall have been lost or destroyed, and to have said mortgage released by the creditor holding the same, in the manner above mentioned.】

【SEC. 531. If the debt secured by mortgage shall be assigned, but the mortgage shall not be assigned to the holder of said debt, or if the original mortgage having been assigned shall be lost or destroyed, the owner of the incumbered property, on payment of the debt, shall be entitled to a deed of release from the mortgagee; and in no other case where the mortgage has been assigned by the original creditor secured thereby shall the original mortgagee be authorized to execute a deed of release.】

【SEC. 532. A release made as provided in the foregoing sections by the original creditor holding a mortgage for the security of a debt, or by any indorsee or assignee of said debt who shall also hold an assignment of said mortgage, shall be as effectual to extinguish said mortgage as if the mortgagee had executed a deed of release of the incumbered property; but if the original creditor secured by mortgage has not assigned either his debt or his mortgage, the owner of the incumbered property may, at his election, on payment of the debt, require a deed of release from the mortgagee.】

Secs. 524-532, inclusive, repealed by act of June 30, 1902 (32 Stat. L. pt. 1, p. 532).

SEC. 533. SURVIVAL OF TITLE.—Whenever a mortgage or deed of trust to secure a debt is executed to two or more mortgagees or trustees in fee simple, upon the death of any one or more of them the

legal title and the trust attached to it shall be held to survive to the survivor or survivors and the heirs of the last survivor, subject to the provisions aforesaid.

SEC. 534. DEATH OF MORTGAGEE OR TRUSTEE.—In case of the death of a sole mortgagee or trustee, or the last survivor of several, if the debt secured by the mortgage or deed of trust shall not have been paid, the party entitled thereto may file a petition in the supreme court of said District, setting forth under oath the execution of the mortgage or deed of trust, the death of the mortgagee or trustee, and the fact that the debt secured by the said mortgage or deed of trust remains unpaid, and such other fact as may be necessary to entitle the petitioner to the relief prayed, and praying for the appointment of a trustee to execute the trusts of the said mortgage or deed of trust. It shall not be necessary to make the heirs at law or devisees of the deceased mortgagee or trustee parties to such proceeding. The court may thereupon lay a rule upon the debtor or parties whose property is bound by said mortgage or deed of trust, unless they shall voluntarily appear and admit the allegations of the petition, to show cause, under oath, on or before the tenth day, exclusive of Sundays and legal holidays, after the service of such rule, why the prayer of said petition should not be granted. If said party or parties can not be found in said District, service of said rule shall be by publication, according to the practice in equity in said court. If no cause be shown, notwithstanding the service of said rule, against the prayer of said petition, the court may determine in a summary way whether said debt remains unpaid, and if satisfied thereof the said court may, by decree, appoint a new trustee in the place of the deceased mortgagee or trustee, and vest in him all the title at law and in equity, and all the powers that had been conveyed to and vested in the deceased mortgagee or trustee.

See sections 95, 522.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 532), adding "or devisees" after the words "heirs at law."

Quaere: Whether sections 534 and 538 of the code were intended to supersede the former course of procedure in equity for the removal and appointment of trustees. *Marshall v. Kraak*, 23 App. D. C. 129 (1904); 32 W. L. R. 130. Trustees "refusal or disability to perform the trust is the equivalent in equity of a renunciation of the legal estate." *Ib.* Publication need not be had upon an absconding trustee, whose whereabouts is unknown. *Ib.*

SEC. 535. DEFENSES AGAINST FORECLOSURE.—If matter of defense against the foreclosure of said mortgage or the enforcement of said deed of trust be set up in answer to said rule, the further proceedings shall be according to the practice in equity after answer filed.

As to defense of limitations and laches in suit to foreclose deed of trust, see *Sis v. Boorman*, 11 App. D. C. 116 (1897); 25 W. L. R. 431; also *Cropley v. Eyster*, 9 App. D. C. 373 (1896); 24 W. L. R. 829.

Whitaker v. Construction Co., 7 App. D. C. 203 (1895); 23 W. L. R. 797.

Wheeler v. McBlair, 5 App. D. C. 375 (1895); 23 W. L. R. 153; affirmed 172 U. S. 653.

Foreclosure may be had by proceeding in equity, without calling on trustees to sell under power of sale in deed of trust. *Utermehle v. McGreal*, 1 App. D. C. 359 (1893); 21 W. L. R. 755; reversed, on other grounds, 167 U. S. 638.

SEC. 536. In case of the death of any trustee appointed as aforesaid without having executed the trusts of the mortgage or deed of

trust, a like proceeding to the above may be had to appoint a successor to him in the said trusts.

See section 522.

Marshall v. Kraak, 23 App. D. C. 129 (cited under sec. 522-534).

SEC. 537. RELEASE AFTER DEATH OF MORTGAGEE, AND SO FORTH.—In case of the death of a sole mortgagee or trustee or the last survivor of several, as aforesaid, if the debt secured by the mortgage or deed of trust shall have been paid, and it is desired by the party paying the same to obtain a deed of release, the said party may file a petition in said supreme court of the District, setting forth, under oath, the execution of said mortgage or deed of trust, the death of the mortgagee or trustee, the payment of the debt, and any other fact necessary to entitle the petitioner to the relief prayed, and praying for the appointment of a trustee in the place of the deceased mortgagee or trustee to execute a deed of release of said mortgage or deed of trust. It shall not be necessary to make the heirs or devisees of the deceased mortgagee or trustee a party to such proceeding. The court may thereupon lay a rule upon the creditor secured by said mortgage or deed of trust, unless he shall voluntarily appear and admit the allegations of the petition, to show cause, under oath, on or before the tenth day, exclusive of Sundays and legal holidays, after the service of said rule, why the prayer of the petition should not be granted. If said party can not be found in said District, service of said rule shall be by publication according to the practice in equity in said court. If no cause be shown, notwithstanding the service of said rule, against the prayer of the petition, the court may determine in a summary way whether said debt has been paid, and if satisfied thereof may, by decree, appoint a trustee in the place of the deceased mortgagee or trustee and invest in him the title, in law and in equity, that was in the deceased mortgagee or trustee, for the purpose of executing a deed of release as aforesaid. If matter of defense against the prayer for a release of said mortgage or deed of trust be set up in answer to said rule, the further proceedings shall be according to the practice in equity after answer filed.

32 Stat. L. pt. 1, p. 532.

Marshall v. Kraak, 23 App. D. C. 129 (cited under sec. 522-534).

SEC. 538. APPOINTMENT OF NEW TRUSTEE.—In case of the refusal of any trustee named in a deed of trust to secure a debt to accept the trusts thereby created, or of his resignation of said trust after accepting the same, which is hereby allowed, or of his removal from the District of Columbia, or of his inability to act, or for any other good cause shown, it shall be lawful for any party interested in the execution of such trusts to apply to said court by petition, setting forth the appropriate facts and asking for the appointment of a new trustee in his place, and a like proceeding shall be had for the appointment of such trustee as in the case of the death of a trustee, as directed in sections five hundred and thirty-four and five hundred and thirty-seven aforesaid: *Provided*, That any rule to show cause issued in such case shall be served upon the existing trustee, as *provided in said sections*.

Marshall v. Kraak, 23 App. D. C. 129 (cited under sec. 522-534).

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 532).

SEC. 539. TERMS OF SALE.—If the length of notice and terms of sale are not prescribed by the mortgage or deed of trust, or be not left therein to the judgment or discretion of the mortgagee or trustee, any person interested in such sale may apply to the court, before such sale is advertised, to fix the terms of sale and determine what notice of sale shall be given.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 532).

See section 95.

[SEC. 540. INJUNCTION AGAINST SALE.—If any party interested and duly notified of an intended sale under any mortgage or deed of trust, as directed in section five hundred and thirty-nine aforesaid, shall fail to make application to the court to prevent such sale within the time covered by such notice, such party shall not be entitled afterwards to be relieved against such sale except upon the conditions that a satisfactory excuse be shown for the delay in making application therefor, and all expenses incurred in and about such sale or attempted sale be first paid by him and a valid defense against the foreclosure of said mortgage or deed of trust be shown.]

[SEC. 541. No sale under a mortgage or deed of trust shall be enjoined on the ground that the amount claimed by the creditor secured thereby is in excess of the true amount due him, unless the party seeking such relief shall set forth and show what amount is justly due and shall offer to pay the amount so admitted to be due.]

[SEC. 542. DEBTOR NOT TO BID.—At any sale made under a mortgage or deed of trust the debtor or other person owning the property and for whose default the sale is made shall not be allowed to bid: *Provided*, That this shall not be construed to prohibit a part owner from bidding at such sale in order to acquire title to the entire property sold.]

[SEC. 543. MORTGAGEE BUYING.—At any sale under a mortgage, fairly made by the mortgagee, at public auction, the mortgagee himself may buy in the property on account of the mortgage debt.]

SECS. 540-543, inclusive, repealed by act of June 30, 1902 (32 Stat. L. pt. 1, p. 533).

SEC. 544. CREDITOR BUYING.—If a creditor, for the payment of whose debt property shall be sold under a deed of trust, shall become the purchaser at such sale, he shall be entitled to credit the amount of the purchase money against the debt, and shall be only required to pay to the trustee the excess of the purchase money over his debt, together with such additional amount as may be necessary to defray the expenses of the sale.

“While a mortgagee or a trustee in a mortgage or deed of trust may not become the purchaser at his own sale, unless permitted by the terms of the instrument or authorized by statute, a creditor secured by such mortgage or trust may do so.” *Smith v. Jackson*, 48 App. D. C. 565 (1919) ; 47 W. L. R. 226, citing *Smith v. Black*, 115 U. S. 308. As to legality of agreement between attorney for the party secured and a third party to buy the property at the trustee's sale, see *Ib.* reversed in 254 U. S. 586.

SEC. 545. EXPENSES AND COMMISSIONS.—Among the lawful expenses of a sale under a mortgage or deed of trust is to be allowed a commission on the proceeds of sale to the mortgagee or trustee. Where the mortgage or deed of trust does not fix the rate of commission the mortgagee or trustee shall be allowed a commission of five per centum on the first five hundred dollars and three per centum on the balance of the purchase money actually paid by the purchaser at any sale, and one and one-half per centum on the amount of the purchase money not paid into the hands of the mortgagee or trustee, but credited on the debt, when the creditor becomes a purchaser.

When the property is lawfully advertised for sale under a mortgage or deed of trust, and the sale is prevented by payment of the

debt or is suspended or postponed by arrangement between the parties interested, the trustee shall be entitled to a commission of one per centum on the amount of the debt secured in addition to the expenses incurred by him, and he shall be entitled to such allowance as often as such advertisement shall be made necessary by the default of the debtor: *Provided*, That if a sale shall actually take place under any such advertisement, he shall not be entitled to more than one such allowance in addition to his commission on the proceeds of an actual sale.

SUBCHAPTER THREE

DEEDS OF CHATTELS

SEC. 546. RECORDING.—No bill of sale or mortgage or deed of trust to secure a debt of any personal chattels whereof the vendor, mortgagor, or donor shall remain in possession, shall be valid and effectual to pass the title therein, except as between the parties to such instrument and as to other persons having actual notice of it, unless the same be executed, acknowledged, and within ten days from the date of such acknowledgment recorded in the same manner as deeds of real estate, as herein directed, and as to third persons not having notice of it, as aforesaid, such instrument shall be operative only from the time within said ten days when it is delivered to the recorder of deeds to be recorded.

See sections 1105, 1106.

Act of Maryland of 1729, ch. 8, sec. 5; Comp. Stat. D. C., p. 230, sec. 1; Act of May 21, 1896 (29 Stat. L., p. 128).

Failure to record bill of sale does not make sale void as to marshal who levied on the property with notice of the transfer of title. *Splain v. Rubber Co.*, 53 App. D. C. 300 (1923); 51 W. L. R. 539. As to validity of sale where vendor retains possession, see *Ib.*

"Record is required within 10 days after * * * the act of acknowledgment. There is nothing in the law which requires that acknowledgment of the instrument be of its date, and, unless the delay in acknowledging be unreasonable and intervening rights accrue during the period of delay, the recorded instrument will have the same force and effect as if acknowledged on the date of its execution." *Paper Co. v. Southern S. F. Co.*, 46 App. D. C. 84 (1917); 45 W. L. R. 163. *Quaere*: Whether landlord's lien is embraced within provision requiring recordation of conditional sales contract. *Ib.*

Unrecorded transfer is good inter partes. *Art Co. v. Hutchins*, 41 App. D. C. 156 (1913); 41 W. L. R. 830, citing *Colbert v. Baetjer*, 4 App. D. C. 416.

Baum v. Mfg. Co., 33 App. D. C. 237 (1909); 37 W. L. R. 276.

SEC. 547. CONDITIONAL SALES.—No conditional sale of chattels in virtue of which the property is delivered to the purchaser, but by the terms of which the title is not to pass until the price of said chattels is fully paid, *where the purchase price exceeds one hundred dollars*, shall be valid as against third persons acquiring title to said property from said purchaser without notice of the terms of said sale, unless the terms of said sale are reduced to writing and signed by the parties thereto and acknowledged by the purchaser and recorded in the same manner as a chattel mortgage, as hereinabove provided; and said writing shall be indexed as if the purchaser were a mortgagor and the seller a mortgagee of such chattels, and shall be operative as to third persons without actual notice of it from the time of being so recorded.

Act of June 30, 1902 (32 Stat. L. p. 533).

See cases cited under section 546.

Lease construed as conditional sales agreement. *Stern v. Drew*, 52 App. D. C. 191 (1922); 51 W. L. R. 3, distinguishing *Randolph v. Graphophone Co.*, 45 App. D. C. 146. See also *Smith v. Gilmore*, 7 App. D. C. 192 (1895); 23 W. L. R. 717, as to determination of intention of parties to such agreements. "Since this statute restricts the rights of property by regulating its use, its scope may not be broadened by construction." *Gill v. Kahl-Holt Co.*, 47 App. D. C. 53 (1917); 45 W. L. R. 738. An assignee of after-acquired property takes it subject to the conditions with which it is encumbered, notwithstanding that such encumbrance is an oral conditional sales agreement. *Ib.*

"A sale and delivery of personal property on condition that the title remain in the vendor until performance of the condition authorizes the vendor, in case of failure to fulfill the conditions, to repossess himself of the property, not only from the vendee but from those holding under him. * * * Such a condition may exist either in the case of a sale for cash or on time." *Minnix Co. v. Typewriter Co.*, 33 App. D. C. 357 (1909); 37 W. L. R. 437. Title does not pass until condition is fulfilled. *Ib.* Also *Wall v. De Mitkiewicz*, 9 App. D. C. 109 (1896); 24 W. L. R. 408.

Quære: Whether creditor of vendee in contract of conditional sale, or of purchaser (without notice) from him, are entitled to the benefits of this section. *Baum v. Knabe Mfg. Co.*, 33 App. D. C. 237 (1909); 37 W. L. R. 276. As to relative rights of warehouseman and conditional vendor, see *Ib.*

Election of remedies as affecting rights under conditional bill of sale, see *Smith v. Gilmore*, 7 App. D. C. 192 (1895); 23 W. L. R. 717.

SUBCHAPTER FOUR

DEEDS, RECORDER OF

SEC. 548. APPOINTMENT AND DUTIES.—There shall be a recorder of deeds of the District, appointed by the President, by and with the advice and consent of the Senate, who shall record all deeds, contracts, and other instruments in writing affecting the title or ownership of any real estate or personal property in the District which shall have been duly acknowledged and certified, and who shall perform all requisite services connected therewith, and shall have charge and custody of all the records, papers, and property appertaining to his office.

See section 493.

R. S. D. C. sec. 467; Comp. Stat. D. C. pp. 498 et seq.

SEC. 549. DEPUTY RECORDER.—The recorder of deeds is authorized to appoint a deputy recorder, and all deeds of conveyance, leases, powers of attorney, and other written instruments required to be filed and recorded, and all copies of instruments and records and certificates authorized by law, filed, recorded, made, and certified by the deputy recorder shall have the same legality, force, and effect as if performed by the recorder.

SEC. 550. VACANCY.—In case of a vacancy in the office of the recorder by death, resignation, or other cause the deputy recorder shall act until a recorder shall be duly appointed and qualified: *Provided*, That no additional expense shall be incurred by the District for said deputy and no other fees shall be allowed than are now provided by law.

SEC. 551. TYPEWRITTEN RECORDS.—The recorder of deeds is authorized and empowered to purchase and use in his office, for the recording of deeds and other instruments of writing required by law to be

recorded in said office, typewriting machines, to be paid for as appropriations may be made from time to time; and all deeds and other instruments of writing entitled by law to be recorded in said office which shall be recorded by typewriting machines are hereby declared to be legally recorded.

SEC. 552. FEES.—The legal fees for the services of the recorder shall be as follows, namely:

For filing, recording, and indexing, or for making certified copy of any instrument containing two hundred words or less, fifty cents, and fifteen cents for each additional hundred words, to be collected at the time of filing and when the copy is made.

For each certificate and seal, twenty-five cents.

For searching records extending back two years or less next preceding current date, twenty-five cents, and five cents for each additional year, to be paid by the party for whom the search may be made.

For recording a town plat, three cents for each lot such plat may contain.

For recording a plat or survey, five cents for each course such survey may contain.

For filing and indexing any paper required by law to be filed in his office, fifteen cents.

For taking any acknowledgment, fifty cents.

In addition to the fees herein required, all corporations hereafter incorporated in the District of Columbia shall pay to the recorder of deeds at the time of the filing of the certificate of incorporation forty cents on each thousand dollars of the amount of the capital stock of the corporation as set forth in its said certificate: Provided, however, That the fee so paid shall not be less than twenty-five dollars: And provided further, That the recorder of deeds shall not file or record any certificate of organization of any incorporation until it has been proved to his satisfaction that all the capital stock of said company has been subscribed for in good faith, and not less than ten per cent of the par value of the stock has been actually paid in cash, and the money derived therefrom is then in the possession of the persons named as the first board of trustees.

Act of February 4, 1905 (33 Stat L. pt. 1, p. 689), adding last paragraph.

SEC. 553. SALARY; SURPLUS TO BE PAID INTO THE TREASURY.—The recorder of deeds of the District of Columbia shall not retain of the fees and emoluments of his office for his personal compensation over and above his necessary clerk hire and the incidental expenses of his office, certified to by the supreme court of the District of Columbia, or by one of its justices appointed by it for that purpose, and to be audited and allowed by the proper accounting officer of the Treasury, a sum exceeding four thousand dollars a year or exceeding that rate for any time less than a year; and the surplus of such fees and emoluments shall be paid into the Treasury to the credit of the District of Columbia: *Provided*, That the number of clerks and others employed in the office of the recorder of deeds shall not be increased, except that additional copyists may be employed for temporary service as the necessities of the office may require, nor shall the salary or compensation of clerks and others be increased beyond the salaries or compensation paid during the fiscal year *nineteen hundred and one*,

to take effect with this code, and the salary of the deputy recorder of deeds shall be two thousand five hundred dollars per annum, to be paid out of the fees and emoluments of said office of recorder of deeds.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 533).

§ SEC. 554. LIST OF TRANSFERS TO BE FURNISHED TO COLLECTOR OF TAXES.—The recorder of deeds shall furnish to the collector of taxes, on or about the first Monday in January and July of each year, correct lists of the transfers of real property in the District during the preceding half year, so far as can be ascertained by the records in his office, but shall not be entitled to any compensation for such service.】

Repealed by act of June 30, 1902 (32 Stat. L. pt. 1, p. 533).

SEC. 555. INSTRUMENTS NOT EXECUTED OR ACKNOWLEDGED ACCORDING TO LAW.—The recorder shall not accept for record or record any instrument which shall not be executed and acknowledged agreeably to law by the person or party therein granting or contracting with respect to his right, title, or interest in the land therein described.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 533), repealing 31 Stat. L. p. 1189.

Recorder has no jurisdiction to pass on validity of instruments presented for record. *Dancy v. Clark*, 24 App. D. C. 487 (1905); 33 W. L. R. 18. "He is by law required to receive and file, or receive and record * * * such instruments as have been duly executed, and which purport on their face to be of the nature of instruments entitled to be filed or recorded." *Ib.* As to use of mandamus to compel recordation, see *Ib.*

"The record of an instrument that is not permitted by law to be recorded, or that is not proved for record as required by law, is constructive notice to no one." *Clark v. Harmer*, 5 App. D. C. 114 (1895); 23 W. L. R. 120.

SEC. 556. PUBLIC RECORDS TO BE OPEN FOR INSPECTION.—All public records which have reference to or in any way relate to real or personal property in the District of Columbia, whether the same be in the office of the recorder of deeds or in some other public office in the District of Columbia, shall be open to the public for inspection free of charge.

SUBCHAPTER FIVE

FORMS OF CONVEYANCING

FEE SIMPLE DEED

This deed, made this ---- day of ----, in the year ----, by me, -----, of ----, witnesseth, that in consideration of (here insert consideration), I, the said ----, do grant unto (here insert grantee's name), of ----, all that (here describe the property).

Witness my hand and seal.

_____. [Seal.]

DEED BY HUSBAND AND WIFE

This deed, made this ---- day of ----, in the year ----, by us, ---- and ----, his wife, of ----, witnesseth, that in consideration of ----, we, the said ---- and his wife, do grant unto ----, of ----, and so forth.

Witness our hands and seals.

_____. [Seal.]
_____. [Seal.]

DEED OF LIFE ESTATE

This deed, made this ----- day of -----, in the year -----, by me, -----, of -----, witnesseth, that in consideration of -----, I, the said -----, do grant unto -----, of -----, all that, (*here describe the property*) to hold during his life and no longer.

Witness my hand and seal.

----- [Seal.]

DEED OF TRUST TO SECURE DEBTS, SURETIES, OR FOR OTHER PURPOSES

This deed, made this ----- day of -----, in the year -----, by me, -----, of -----, witnesseth, that whereas (here insert the consideration for the deed), I, the said -----, do grant unto -----, of -----, *as trustee* the following property (here describe it) in trust for the following purposes (here insert the trusts and any covenant that may be agreed upon.)

Witness my hand and seal.

----- [Seal.]

FORM OF TRUSTEE'S DEED UNDER A DECREE

This deed, made this ----- day of -----, in the year -----, by me, -----, trustee, of -----, witnesseth: Whereas by a decree of (here insert court) passed on the ----- day of -----, in the cause of ----- versus -----, I, the said -----, was appointed trustee to sell the land decreed to be sold, and have sold the same to -----; and said sale has been ratified by said court, and said ----- has fully paid the purchase money due on said sale; now, therefore, in consideration of the premises, I, the said -----, do grant unto -----, of -----, all the right and title of all the parties to the aforesaid cause, in and to all that (here describe property).

Witness my hand and seal.

----- [Seal.]

EXECUTOR'S DEED

This deed, made this ----- day of -----, in the year -----, witnesseth, that I, -----, of -----, executor of the last will of -----, late of -----, deceased, under a power in said will contained, in consideration of -----, have sold and do hereby grant to -----, of -----, all that (*here describe the property*).

Witness my hand and seal.

----- [Seal.]

FORM OF MORTGAGE, WITH OR WITHOUT POWER OF SALE

This mortgage, made this ----- day of -----, in the year -----, witnesseth that whereas I, ----- of -----, am indebted unto -----, of -----, in the sum of -----, payable -----, for which I have given to said ----- my (here describe obligation). Now, in consideration thereof, I hereby grant unto the said ----- all that (here describe property), provided that if I shall punctually pay said

(notes or other instruments) according to the tenor thereof then this mortgage shall be void. And if I shall make default in such payment the said ----- is hereby authorized and empowered to sell said property at public auction on the following terms (here insert them), and out of the proceeds of sale to retain whatever shall remain unpaid of my said indebtedness and the costs of such sale, and the surplus, if any, to pay to me.

Given under my hand and seal.

_____. [Seal.]

FORM OF LEASE

This lease, made this ----- of -----, in the year -----, between ----- of ----- and -----, of -----, witnesseth that the said ----- doth lease unto the said -----, his executor, administrator, and assigns, all that (here describe the property) for the term of ----- years, beginning on the ----- day of -----, in the year -----, and ending on the ----- day of -----, in the year -----, the said ----- paying therefor the sum of ----- on the ----- day of ----- in each and every year (or month, as the case may be).

Witness our hands and seals.

_____. [Seal.]
_____. [Seal.]

The foregoing forms or forms to the like effect shall be sufficient, and any covenant, limitation, restriction, or proviso allowed by law may be added, annexed to, or introduced in the above forms. Any other form conforming to the rules hereinbefore laid down shall be sufficient.

32 Stat. L. pt. 1, p. 533.

CHAPTER SEVENTEEN

COMMISSIONERS OF DEEDS AND NOTARIES PUBLIC

SEC. 557. COMMISSIONERS OF DEEDS.—The President of the United States is authorized to appoint as many commissioners of deeds throughout the United States as he may deem necessary, with power to take the acknowledgment of deeds for the conveyance of property within the District, administer oaths, and take depositions in cases pending in the courts of said District in the manner prescribed by law; to whose acts, properly attested by their hands and seals of office, full faith and credit shall be given.

See sections 493, 495.

SEC. 558. NOTARIES.—The President shall also have power to appoint such number of notaries public, residents of said District, as, in his discretion, the business of the District may require: *Provided, That the appointment of any person as such notary public, or the acceptance of his commission as such, or the performance of the duties thereunder, shall not disqualify or prevent such person from representing clients before any of the Departments of the United States Government in the District of Columbia or elsewhere, provided such person so appointed as a notary public who appears to practice or represent clients before any such Department is not otherwise engaged in Government employ, and shall be admitted by the heads of such Departments to practice therein in accordance with the rules and regulations prescribed for other persons or attorneys who are admitted to practice therein: And provided further, That no notary public shall be authorized to take acknowledgements, administer oaths, certify papers, or perform any official acts in connection with matters in which he is employed as counsel, attorney, or agent or in which he may be in any way interested before any of the Departments aforesaid.*

Act of June 29, 1906 (34 Stat. L. pt. 1, p. 622) adding proviso.

No notary, wherever appointed, can take acknowledgments in matters in which he appears as counsel or is in any way interested before any department. *Hall Safe Co. v. Safe Co.*, 31 App. D. C. 498 (1908).

See section 493.

SEC. 559. TENURE OF OFFICE.—Said commissioners of deeds and notaries public shall hold their offices for the period of five years, removable at discretion.

Act of June 7, 1878 (20 Stat. L. p. 101).

SEC. 560. NOTARIES IN STATES.—Notaries public of the several States, Territories, and the District of Columbia are authorized to take depositions and do all other acts in relation to taking testimony to be used in the courts of the District of Columbia, take acknowl-

edgements and affidavits in the same manner and with the same effect as United States commissioners may now lawfully take or do.

Act of August 15, 1876 (19 Stat. L. p. 206).

SEC. 561. OATH AND BOND.—Each notary public, before entering upon the duties of his office, shall take the oath prescribed for civil officers in the District of Columbia, and shall give bond to the United States in the sum of two thousand dollars, with security, to be approved by the supreme court or a justice thereof, for the faithful discharge of the duties of his office.

R. S. D. C., secs. 979, 992; Comp. Stat. D. C. pp. 107 et seq.

SEC. 562. SEAL.—Each notary public shall provide a notarial seal, with which he shall authenticate all his official acts.

SEC. 563. He shall file his signature and deposit an impression of his official seal in the office of the clerk of the supreme court of the District.

SEC. 564. EXEMPTION.—A notary's official seal and his official documents shall be exempt from execution.

SEC. 565. FOREIGN BILLS OF EXCHANGE.—Notaries public shall have authority to demand acceptance and payment of foreign bills of exchange and to protest the same for nonacceptance and nonpayment, and to exercise such other powers and duties as by the law of nations and according to commercial usages notaries public may do.

See section 1456, 1458.

R. S. D. C. sec. 983; Comp. Stat. D. C. p. 107, sec. 9.

SEC. 566. OTHER ACTS.—They may also perform such other acts, for use and effect beyond the jurisdiction of the District, as according to the law of any State or Territory of the United States or any foreign government in amity with the United States may be performed by notaries public.

SEC. 567. INLAND BILLS AND NOTES.—Notaries public may also demand acceptance of inland bills of exchange and payment thereof, and of promissory notes and checks, and may protest the same for nonacceptance or nonpayment, as the case may require. And on the original protest thereof he shall state the presentment by him of the same for acceptance or payment, as the case may be, and the nonacceptance or nonpayment thereof, and the service of notice thereof on any of the parties to the same, and the mode of giving such notice, and the reputed place of business or residence of the party to whom the same was given; and such protest shall be prima facie evidence of the facts therein stated. And any notary public failing to comply herewith shall pay a fine of ten dollars to the District of Columbia, to be collected in the police court as are other fines and penalties.

See section 1422.

R. S. D. C. secs. 985-988; Comp. Stat. D. C. p. 107, secs. 11, 14, construed in *Presby v. Thomas*, 1 App. D. C. 171 (1893); 21 W. L. R. 659.

SEC. 568. ACKNOWLEDGMENTS, OATHS, AND SO FORTH.—Each notary public shall have power to take and to certify the acknowledgment or proof of powers of attorney, mortgages, deeds, and other instruments of writing, the acknowledgment of any conveyance or other instrument of writing executed by any married woman, to take depositions

and to administer oaths and affirmations and *also* to take affidavits to be used before any court, judge, or officer within the District.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 533).

See section 493, 845.

SEC. 569. RECORD.—Each notary public shall keep a fair record of all his official acts, except such as are mentioned in the preceding section, and when required shall give a certified copy of any record in his office to any person upon payment of the fees therefor.

SEC. 570. COPY OF RECORD AS EVIDENCE.—The certificate of a notary public, under his hand and seal of office, drawn from his record, stating the protest and the facts therein recorded, shall be evidence of the facts in like manner as the original protest.

SEC. 571. FEES.—The fees of notaries public shall be—

For each certificate and seal, fifty cents.

Taking depositions or other writings, for each one hundred words, ten cents.

Administering an oath; fifteen cents.

Taking acknowledgment of a deed or power of attorney, with certificate thereof, fifty cents.

Every protest of a bill of exchange or promissory note, and recording the same, one dollar and seventy-five cents.

Each notice of protest, ten cents.

Each demand for acceptance or payment, if accepted or paid, one dollar, to be paid by the party accepting or paying the same.

Each noting of protest, one dollar.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 533).

SEC. 572. PENALTIES FOR TAKING HIGHER FEES.—Any notary public who shall take a higher fee than is prescribed by the preceding section shall pay a fine of one hundred dollars and be removed from office by the supreme court of the District.

SEC. 573. DEATH, AND SO FORTH.—Upon the death, resignation, or removal from office of any notary public, his records, together with all his official papers, shall be deposited in the office of the clerk of the supreme court of the District.

CHAPTER EIGHTEEN

CORPORATIONS

SUBCHAPTER ONE

INSTITUTIONS OF LEARNING

SEC. 574. CERTIFICATE OF ORGANIZATION.—Any five or more persons desirous of associating themselves for the purpose of establishing an institution of learning, may make, sign, and acknowledge, before any officer authorized to take acknowledgment of deeds in the District, and file in the office of the recorder of deeds, a certificate in writing, to be recorded in a book kept for that purpose and open to public inspection, in which shall be stated:

First. The name or title by which the institution shall be known in law;

Second. The number of trustees, directors, or managers, and their names;

Third. The particular branch of literature and science, or either of them, proposed to be taught; and,

Fourth. If the institution is to be of the rank of a college or university, the number and designation of the professorships to be established.

Dancy v. Clark, 24 App. D. C. 487 (1905) ; 33 W. L. R. 18.

As to meaning of term "institution of learning," see *Chicago Business College v. Payne*, 20 App. D. C. 606 (1902) ; 30 W. L. R. 812.

SEC. 575. SIGNERS INCORPORATED.—Upon filing such certificate, the persons signing and acknowledging the same and their successors and associates shall be a body politic and corporate, by the name and style stated in the certificate, and by that name and style shall have perpetual succession, with power to sue and be sued, plead and be impleaded; to acquire, hold, and convey property in all lawful ways; to have and use a common seal, and to alter and change the same at pleasure; to make and alter, from time to time, such by-laws not inconsistent with the Constitution of the United States or the laws in force in the District as they may deem necessary for the government of the institution, and to confer upon such persons as may be considered worthy such academical or honorary degrees as are usually conferred by similar institutions.

SEC. 576. CORPORATE POWERS.—Such corporation shall be competent in law and equity to take to themselves, in their corporate name, real, personal, or mixed property by gift, grant, bargain and sale, conveyance, will, devise, or bequest of any person whomsoever, and to grant, bargain, sell, convey, demise, let, place out at interest, or otherwise dispose of the same for the use of the institution, in such manner as shall seem most beneficial thereto.

SEC. 577. PROPERTY HELD, FOR WHAT PURPOSES.—Such corporation shall hold the property of the institution solely for the purposes of education, and not for the individual benefit of themselves or of any contributor to the endowment thereof.

SEC. 578. FUNDS, HOW APPLIED.—The trustees, directors, or managers of any such corporation shall faithfully apply all the funds collected or the proceeds of the property belonging to the institution, according to their best judgment, in erecting or completing suitable buildings, supporting necessary officers, instructors, and servants, and procuring books, maps, charts, globes, and philosophical, chemical, and other apparatus necessary to the success of said institution.

SEC. 579. In case any donation, devise, or bequest shall be made for particular purposes, in accordance with the designs of the institution, and the corporation shall accept the same, such donation, devise, or bequest shall be applied in conformity with the express condition of the donor or deviser.

SEC. 580. QUANTITY OF LAND.—No such corporation shall hold more land at any one time than necessary for the purposes of education, as set forth in its articles of association, unless it shall have received the same by gift, grant, or devise, and in such case the corporation shall be required to sell or dispose of the same within fifteen years from the time the title thereto is acquired.

SEC. 581. On failure to so dispose of the land, so much of the same over and above the amount necessary to be used as provided in the preceding section shall revert to the original donor, grantor, deviser, or their heirs.

SEC. 582. OFFICERS.—Such corporation shall have the power to appoint a president or principal for the institution and such professors or servants as may be necessary, and to displace any of them, as the interests of the institution require; to fill vacancies which may happen by death, resignation, or otherwise among such officers or servants, and to prescribe and direct the course of studies to be pursued in the institution.

SEC. 583. TREASURER.—Such corporation may require the treasurer of the institution and all other agents thereof, before entering upon the duties of their appointment, to give bond for the security of the corporation in such sums and with such security as may be deemed sufficient by the corporation.

SEC. 584. ANNUAL STATEMENTS.—It shall be the duty of the trustees of any institution, or a majority of them, to file, on or before the first Monday in January in each year, in the office of the recorder of deeds, who shall index the same, a statement of the trustees and officers of the institution, with an inventory of its property and liabilities and students, and such other information as will exhibit its condition or operation.

SEC. 585. SUITS.—All process against any such corporation shall be by summons, and the service of the same shall be by leaving an attested copy thereof with the president, secretary, or treasurer, or at the office of the corporation at least sixty days before the return day thereof.

SEC. 586. QUO WARRANTO.—In case any such corporation shall at any time violate or fail to comply with any of the preceding pro-

visions, upon complaint being made to the supreme court of the District, a writ of quo warranto shall issue, and the district attorney of the United States shall prosecute, in behalf of the people, for a forfeiture of all rights and privileges secured by this subchapter to such corporation.

See sections 1538 et seq.

R. S. D. C., secs. 520-532; Comp. Stat. D. C., pp. 121 et seq.

SUBCHAPTER TWO

RELIGIOUS SOCIETIES

SEC. 587. LAND TO BE ACQUIRED.—It shall be lawful for the members of any society or congregation in the District, formed for the purpose of religious worship, to receive by gift, devise, or purchase a quantity of land not exceeding an acre, and to erect thereon such houses and buildings and to make such other use of the land and such other improvements thereon as may be deemed necessary for the purposes named, and for the comfort and convenience of the society or congregation.

Bradfield v. Roberts, 175 U. S. 291 (1899), affirming 12 App. D. C. 453; 26 W. L. R. 342.

SEC. 588. TRUSTEES.—Such society or congregation may assume a name, and any number of trustees, not exceeding ten, who shall be styled trustees of such society or congregation by the name so assumed, may be elected or appointed according to the rules or discipline governing the church or denomination to which said society or congregation may belong.

SEC. 589. CERTIFICATE.—The persons elected or appointed as trustees or directors shall immediately thereafter make a certificate under their hands and seals, stating the date of their election or appointment, the name of the society or congregation, and length of time for which they were elected or appointed, which shall be verified by the affidavit of one of the persons making the same, and shall be filed and recorded in the office of the recorder of deeds of the District.

42 Stat. L. pt. 1, p. 665.

SEC. 590. TENURE OF OFFICE.—The trustees or directors shall hold office during the period stated in their certificates, and vacancies in the office of trustee may be filled by election or appointment as above provided, and rules and regulations may be adopted in relation to the management of the estate and the duties of trustees or directors, or for their removal from office, in accordance with the rules or discipline governing the church or denomination to which such society or congregation may belong, not inconsistent with the Constitution of the United States and the laws in force in the District.

Act of June 22, 1922 (42 Stat. L. pt. 1, p. 665), inserting words "or directors."

SEC. 591. At the expiration of the term of service of any of the trustees or directors one or more successors may be elected or appointed, and a certificate of their appointment or election shall be made, verified, filed, and recorded as provided hereinbefore.

Act of June 26, 1922 (42 Stat. L. pt. 1, p. 665), inserting words "or directors."

SEC. 592. A failure to elect or appoint trustees *or directors* at the proper time shall not work a dissolution of the society or congregation: but the trustees *or directors* last elected or appointed shall be considered as in office until another election or appointment shall take place.

Act of June 22, 1922 (42 Stat. L. pt. 1, p. 665), inserting words "or directors."

SEC. 593. CORPORATE POWERS.—Such trustees *or directors* and their successors shall have perpetual succession and existence, and shall be capable in law to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all courts of law or equity whatsoever, in and by the name and style assumed as hereinbefore provided.

Act of June 22, 1922 (42 Stat. L. pt. 1, p. 665), inserting words "or directors."

SEC. 594. TITLE VESTED IN TRUSTEES *OR DIRECTORS*.—The title to land authorized to be purchased and to buildings and improvements thereon shall be vested in the trustees *or directors* by their assumed name and their successors forever, and the same shall be held for the uses and purposes named and no other.

Act of June 22, 1922 (42 Stat. L. pt. 1, p. 665), inserting words "or directors."

SEC. 595. POWERS OF TRUSTEES *OR DIRECTORS*.—The trustees *or directors* shall have power, under the direction of the society or congregation, or the authority by whom they were elected or appointed, to sell and execute deeds and conveyances of the property authorized to be held by the society or congregation; and such deeds or conveyances shall have the same effect as like deeds or conveyances made by natural persons; but no deed or conveyance shall be made so as to defeat or destroy the interest or effect of any grant, donation, or bequest, and all grants, donations, and bequests shall be appropriated and used as directed by the person making the same.

Act of June 22, 1922 (42 Stat. L. pt. 1, p. 665), inserting words "or directors."

SEC. 596. MORTGAGES.—The trustees *or directors* shall have power, under the direction of the society or congregation, or the authority by whom they were elected or appointed, to execute mortgages, or deeds of trust in the nature of mortgages, upon the estate and property which any society or congregation are authorized to hold, or to lease the same for a term not exceeding ten years; and such mortgages, deeds, and conveyances shall have the same effect and be enforced by the same remedies and proceedings as like mortgages, deeds, leases, and conveyances made by natural persons.

Act of June 22, 1922 (42 Stat. L. pt. 1, p. 665), inserting words "or directors."

SEC. 597. DISSOLUTION.—Upon the dissolution of any society or congregation the estate and property of such society or congregation shall revert back to the persons, their heirs, and assigns who may have given or contributed to the purchase of or payment for the same, according to their respective rights.

Act of June 22, 1922 (42 Stat. L. pt. 1, p. 665).

SEC. 598. RELIGIOUS SCHOOLS.—The provisions of the eleven preceding sections are intended to extend to members of societies formed

to establish and maintain private schools for religious purposes, but shall not be construed as conferring privileges or any benefits to such societies under the school laws of the District.

R. S. D. C. secs. 533-544; Comp. Stat. D. C. pp. 123 et seq.

SUBCHAPTER THREE.

SOCIETIES, BENEVOLENT, EDUCATIONAL, AND SO FORTH

SEC. 599. CERTIFICATE.—Any three or more persons of full age, citizens of the United States, a majority of whom shall be citizens of the District, who desire to associate themselves for benevolent, charitable, educational, literary, musical, scientific, religious, or missionary purposes, including societies formed for mutual improvement or for the promotion of the arts, may make, sign, and acknowledge, before any officer authorized to take acknowledgement of deeds in the District, and file in the office of the recorder of deeds, to be recorded by him, a certificate in writing, in which shall be stated—

First. The name or title by which such society shall be known in law.

Second. The term for which it is organized, which may be perpetual.

Third. The particular business and objects of the society.

Fourth. The number of its trustees, directors, or managers for the first year of its existence.

Corporation organized under this section has no power to confer degrees. *National Association of Accountants v. U. S.* 51 W. L. R. (Ct. Appls.) 699 (1923). (See sec. 575.) Claiming such a right in the articles of incorporation does not confer right. "It might have taken less than the section gave but not more." *Ib.*

SEC. 600. SIGNERS INCORPORATED.—Upon filing their certificates the persons who shall have signed and acknowledged the same and their associates and successors shall be a body politic and corporate, by the name stated in such certificate; and by that name they and their successors may have and use a common seal, and may alter and change the same at pleasure, and may make by-laws and elect officers and agents, and may take, receive, hold, and convey real and personal estate necessary for the purposes of the society as stated in their certificate, and other real and personal property the clear annual income from which shall not exceed in value twenty-five thousand dollars: *Provided, however,* That this section shall not be construed to exempt any property from taxation in addition to that now specifically exempted by law.

SEC. 601. TRUSTEES.—Such incorporated society may elect its trustees, directors, or managers at such time and place and in such manner as may be specified in its by-laws, who shall have the control and management of the affairs and funds of the society, and a majority of whom shall be a quorum for the transaction of business; and whenever any vacancy shall happen in such board of trustees, directors, or managers the vacancies shall be filled in such manner as shall be provided by the by-laws of the society.

SEC. 602. Any existing benevolent, charitable, educational, musical, literary, scientific, religious, or missionary corporation incorporated under the provisions of this Act, including societies formed for mutual improvement, may reincorporate or may continue the term of its existence beyond the time specified in its original certificate of incorporation, or by law, or in any certificate of continuance of corporate existence, or may change its name by the written consent of two-thirds of its trustees or directors or other governing board, which consent in the case of a stock corporation shall be accompanied by the written consent of the owners of two-thirds of the capital stock of the corporation. A certificate that such consent or consents have been duly given, containing the original name and the new name of the corporation, if the same has been changed, and the term of corporate existence as continued shall be subscribed and acknowledged by the president or vice-president and by the secretary or assistant secretary of such corporation, and shall be filed with such consent or consents in the office of the recorder of deeds, to be recorded by him. Upon the filing of such certificate all the rights, powers, property, and effects of such existing corporation subject to existing liabilities shall vest in and belong to the corporation so reincorporated, continued, or renamed.

Act of March 3, 1905 (33 Stat. L. pt. 1, p. 1012), repealing 31 Stat. L. pt. 1, p. 1189.

SEC. 603. PROPERTY, HOW MANAGED.—Any property of the corporation may be leased, encumbered by mortgage or deed of trust in the nature of a mortgage, or sold and conveyed absolutely, when authorized by a vote of the majority of the shares of stock, if the same be a stock corporation, or by a vote of the majority of the directors, managers, or trustees, if the same be not a stock corporation, at a meeting called for the purpose, the proceedings of which meeting shall be duly entered in the records of the corporation, and the proceeds arising therefrom shall be applied or invested for the use and benefit of such corporation.

SEC. 604. NAME OF CORPORATION.—The provisions of this chapter shall not extend or apply to any corporation, association, or individual who shall in the certificate filed with the recorder of deeds use or specify a name or style the same as that of any other incorporated body in the District.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 533).

R. S. D. C. secs. 545-552; Comp. Stat. D. C. pp. 124 et seq.

SUBCHAPTER FOUR

MANUFACTURING, AGRICULTURAL, MINING, MECHANICAL, INSURANCE, MERCANTILE, TRANSPORTATION, MARKET, AND SAVINGS BANK CORPORATIONS

SEC. 605. CERTIFICATE.—Any three or more persons who desire to form a company for the purpose of carrying on any enterprise or business which may be lawfully conducted by an individual, excepting banks of circulation or discount, railroads, and such other enterprise or business as may be otherwise specially provided for in this code, may make, sign, and acknowledge, before some officer competent

to take the acknowledgment of deeds, and file in the office of the recorder of deeds, a certificate in writing: *Provided, That nothing herein contained shall be held to authorize the organization of corporations to buy, sell, or deal in real estate, except corporations to transact the business ordinarily carried on by real-estate agents or brokers.*

See section 552.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 533), adding proviso.

R. S. D. C., sec. 553, as amended; Comp. Stat. D. C., p. 126, sec. 36.

The proviso "neither declares contracts made in violation of its terms void as against public policy nor does it expressly apply this restriction to foreign corporations doing business in this District." *Hight v. Richmond Park Impro. Co.*, 47 App. 518 (1918); 46 W. L. R. 210. But a foreign corporation will not be accorded greater rights than are enjoyed by domestic corporations. Nevertheless "want of capacity in a domestic or foreign corporation to own and dispose of real estate can only be asserted by the State," and until so questioned good title may be conveyed. *Ib.*, citing, with approval, *Groo v. Norman and Robinson*, 42 App. D. C. 387 (1914).

"No domestic corporation is authorized to hold real estate except as an incident to its business. It clearly is not authorized to hold it for the purpose of selling or dealing in it." *Groo v. Norman & Robinson*, *supra*.

This section does not authorize or allow the combination of all classes of industrial business by one corporation. "On the contrary, the tenor of the enactment is decidedly adverse to any such theory." *Dancy v. Clark*, 24 App. D. C. 487 (1905); 33 W. L. R. 18. Statute allows formation of corporation for only "one business, one enterprise, and not a combination of all the classes of business provided for in the statute." *Ib.* Sections 633 and 635 (*infra*) providing for the extension of the business of the corporation can not be so construed as to permit a combination of two radically different classes of business. *Ib.*

SEC. 606. In such certificate shall be stated—

First. The corporate name of the company and the object for which it is formed.

Second. The term of its existence, which may be perpetual.

Third. The amount of the capital stock of the company and the number of shares of which said stock shall consist.

Fourth. The number of trustees who shall manage the concerns of the company for the first year and their names.

Fifth. The name of the place in the District in which the operations of the company are to be carried on.

R. S. D. C., sec. 553, as amended; Comp. Stat. D. C., p. 126, sec. 36.

Dancy v. Clark, cited under section 605.

SEC. 607. SIGNERS INCORPORATED.—When the certificate shall have been filed, in accordance with the provisions of the preceding section, the persons who shall have signed and acknowledged the same and their successors shall be a body politic and corporate in fact and in name, by the name stated in such certificate, and by that name have succession and be capable of suing and being sued in any court of law or equity in the District; and they and their successors may have a common seal and make and alter the same at pleasure, and they shall by their corporate name be capable in law of purchasing, holding, and conveying any real or personal estate whatever which may be necessary to enable the company to carry on its operations named in such certificates, but shall not mortgage such estate or give any lien thereon, except in pursuance of a vote of the stockholders of the company.

R. S. D. C. sec. 554; Comp. Stat. D. C. p. 126, sec. 38.

SEC. 608. TRUSTEES.—The stock, property, and concerns of such company shall be managed by not less than three nor more than fifteen trustees, who shall, respectively, be stockholders, and a majority citizens of the District, and shall, except for the first year, be annually elected by the stockholders, at such time and place as shall be determined by the by-laws of the company.

R. S. D. C. sec. 555; Comp. Stat. D. C. p. 127, sec. 39.

"Plainly the requirement of this section is that the trustees shall at all times be stockholders, as well for the first year as for all subsequent years." *Dancy v. Clark*, 24 App. D. C. 487 (1905); 33 W. L. R. 39.

SEC. 609. ELECTIONS.—Public notice of the time and place of holding such election shall be published not less than thirty days previous thereto in some newspaper printed and published in the District, and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy. All the elections shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in the company, and the persons receiving the greatest number of votes shall be trustees; and when any vacancy shall happen among the trustees it shall be filled for the remainder of the year in such manner as may be provided by the by-laws of the company.

R. S. D. C. sec. 556; Comp. Stat. D. C. p. 127, sec. 40. *Walker v. Johnson*, 17 App. D. C. 144, 28 W. L. R. 768 (1900).

SEC. 610. In case it shall happen at any time that an election of trustees shall not be made on the day designated by the by-laws of said company when it ought to have been made, the company shall not for that reason be dissolved, but it shall be lawful on any other day to hold an election for trustees, in such manner as shall be provided by the by-laws, and all acts of trustees shall be valid and binding as against said company until their successors shall be elected.

R. S. D. C. sec. 557; Comp. Stat. D. C., p. 127, sec. 42.

SEC. 611. OFFICERS.—There shall be a president of the company, who shall be designated from the trustees; and also such subordinate officers as may be elected or appointed, and who may be required to give security for the faithful performance of the duties of their office, as the company by its by-laws may require.

R. S. D. C. sec. 558; Comp. Stat. D. C. p. 127, sec. 42.

SEC. 612. BY-LAWS.—The trustees shall have power to make such prudential by-laws as they deem proper for the management and disposal of the stock and business affairs of such company, not inconsistent with the laws of the District and the Constitution of the United States, and prescribing the duties of officers, artificers, and servants that may be employed, for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of such company.

R. S. D. C. sec. 559; Comp. Stat. D. C. p. 127, sec. 43.

Dancy v. Clark, 24 App. D. C. 487 (1905); 33 W. L. R. 18.

Walker v. Johnson, 17 App. D. C. 144 (1900); 28 W. L. R. 768.

Scanlan v. Snow, 2 App. D. C. 137 (1894); 22 W. L. R. 62.

SEC. 613. CALLS.—No company incorporated under this subchapter shall be authorized to transact any business until ten per centum of

the capital stock shall have been actually paid in, either in money or in property at its actual value; and it shall be lawful for the trustees to call in and demand from the stockholders the residue of their subscriptions in money or property at such times and in such installments as the trustees shall deem proper, under the penalty of forfeiting the shares of stock subscribed for and all previous payments made thereon, if payment shall not be made by the stockholder within sixty days after a personal demand or a notice requiring such payment shall have been published for six successive weeks in a newspaper in the District.

R. S. D. C. sec. 560; Comp. Stat. D. C. p. 127, sec. 44.

SEC. 614. STOCK.—The stock of such company shall be deemed personal estate and shall be transferable in such manner as shall be prescribed by the by-laws of the company; but no shares shall be transferable until all previous calls thereon shall have been fully paid in or the shares shall have been declared forfeited for nonpayment.

R. S. D. C. sec. 561; Comp. Stat. D. C. p. 127, sec. 45.

Subscribers to stock must be sued severally to recover unpaid subscriptions. *People's Bank v. Saville*, 25 App. D. C. 139 (1905); 33 W. L. R. 178, appeal dismissed, 201 U. S. 641.

Scanlan v. Snow, 2 App. D. C. 137 (1894); 22 W. L. R. 62.

SEC. 615. LIABILITY OF STOCKHOLDERS.—All the stockholders of every company incorporated under this subchapter shall be severally individually liable to the creditors of the company in which they are stockholders for the unpaid amount due upon the shares of stock held by them, respectively, for all debts and contracts made by such company, until the whole amount of capital stock fixed and limited by such company shall have been paid in, and a certificate thereof shall have been made and recorded, as prescribed in the following section.

See section 629.

R. S. D. C. sec. 562; Comp. Stat. D. C. p. 127, sec. 46.

People's Bank v. Saville, cited under section 614.

To recover on a subscription to the capital stock, the corporation plaintiff must establish, by legal and competent proof, the existence of a contract of subscription to the stock. *National Express Co. v. Morris*, 15 App. D. C. 262 (1899); 27 W. L. R. 690. Such contract may be shown without a formal subscription in writing. *Ib.* The mere transfer of the stock into the name of the defendant is not sufficient to impose the liability of a stockholder, unless he consents thereto, or subsequently exercises the rights of a stockholder. *Ib.*

As to doctrine that capital is trust fund for creditors, see *Gilbert v. Washington Beneficial Assoc.*, 10 App. D. C. 316 (1897); 25 W. L. R. 149; 173 U. S. 701; *Glue Co. v. Lange*, 40 App. D. C. 9 (1913); 41 W. L. R. 89.

Statute of limitations begins to run from the time that call is made for payment of unpaid subscription. *Glenn v. Sothoron*, 4 App. D. C. 125 (1894); 22 W. L. R. 649.

Scanlan v. Snow, 2 App. D. C. 137 (1894); 22 W. L. R. 62.

SEC. 616. PAYMENTS ON CAPITAL STOCK.—The president and a majority of the trustees, within thirty days after the payment of the last installment of the capital stock so fixed and limited, shall make a certificate stating the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the president and a majority of the trustees; and they shall within the said thirty days record the same in the office of the recorder of deeds of the District.

R. S. D. C. sec. 563; Comp. Stat. D. C. p. 128, sec. 47.

SEC. 617. ANNUAL REPORTS.—Every such company shall annually, except insurance companies, within twenty days from the first of January, make a report, which shall be published in a newspaper in the District, which shall state the amount of capital and of the proportion actually paid and the amount of existing debts, which report shall be signed by the president and a majority of the trustees, and shall be verified by the oath of the president or secretary of the company, and filed in the office of the recorder of deeds of the District.

R. S. D. C. sec. 566; Comp. Stat. D. C. p. 128, sec. 50, construed in *Jackson v. Clifford*, 5 App. D. C. 312 (1895); 23 W. L. R. 134.

SEC. 618. PENALTY FOR FAILURE.—If any company fails to comply with the provisions of the preceding section, any creditor of the corporation or other person interested may by petition for mandamus against the corporation and its proper officers compel such publication to be made, and in such case the court shall require the corporation or the officers at fault to pay all the expenses of the proceeding, including counsel fees.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 533), repealing 31 Stat. L. p. 1189.

SEC. 619. FALSE REPORT.—If any certificate or report made or public notice given by the officers of any company in pursuance of the provisions of this subchapter shall be false in any material representation, all the officers who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all debts of the company contracted while they are stockholders or officers thereof.

R. S. D. C. sec. 568; Comp. Stat. p. 128, sec. 52.

SEC. 620. STOCK OF OTHER COMPANIES NOT TO BE BOUGHT.—It shall not be lawful for any company to use any of their funds in the purchase of any stock in any other corporation.

R. S. D. C. sec. 569; Comp. Stat. D. C. p. 128, sec. 53.

Ambler v. Archer, 1 App. D. C. 94 (1893); 21 W. L. R. 600.

SEC. 621. LOANS TO STOCKHOLDERS.—No loan of money shall be made by any company upon the security, in whole or in part, of its own stock; and if any such loan shall be made, the trustee or officer authorizing the same shall be responsible to the corporation therefor: *Provided*, That nothing herein contained shall be held to release the borrower in such a case from liability to the corporation.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 533), repealing 31 Stat. L. p. 1189.

R. S. D. C. sec. 570; Comp. Stat. D. C. p. 128, sec. 54.

SEC. 622. DIVIDENDS.—If the trustees of any company shall declare and pay any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally liable for all the debts of the company then existing and for all that shall be thereafter contracted while they shall respectfully remain in office.

R. S. D. C. sec. 571; Comp. Stat. D. C. p. 128, sec. 55.

SEC. 623. If any of the trustees shall object to declaring such dividend or the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of their objection in writing with the secretary of the company and with the recorder

of deeds of the District, they shall be exempt from the liability prescribed in the preceding section.

R. S. D. C. sec. 572; Comp. Stat. D. C. p. 129, sec. 56.

SEC. 624. EXECUTORS, AND SO FORTH, NOT PERSONALLY LIABLE.—No person holding stock in such company as executor, administrator, guardian, or trustee shall be personally subject to any liability as stockholder of such company, but the estate and funds in the hands of such executor, administrator, guardian, or trustee shall be liable in like manner and to the same extent as the testator or intestate or the ward or person interested in such trust fund would have been if he had been living and competent to act and hold the stock in his own name.

R. S. D. C. sec. 576; Comp. Stat. D. C. p. 129, sec. 60.

SEC. 625. EXECUTORS, AND SO FORTH, MAY VOTE.—Every such executor, administrator, guardian, or trustee shall represent the stock in his hands at all meetings of the company, and may vote accordingly as a stockholder.

R. S. D. C. sec. 577; Comp. Stat. D. C. p. 129, sec. 61.

SEC. 626. PLEDGES OF STOCK.—No person holding stock in such company as collateral security shall be personally subject to any liability as stockholder of such company, but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and every person who shall pledge his stock as collateral security may, nevertheless, represent the same at all meetings and vote as a stockholder.

R. S. D. C. sec. 578; Comp. Stat. D. C. p. 129, sec. 62.

SEC. 627. STOCK BOOK.—It shall be the duty of the trustees of every corporation formed under this subchapter to cause a book to be kept by the treasurer or secretary thereof, containing the names of all persons alphabetically arranged, who are or shall within six years have been stockholders of such company, and showing their place of residence, the number of shares of stock held by them respectively, the time when they became owners of such shares, and the amount of stock actually paid in.

R. S. D. C. sec. 579; Comp. Stat. D. C. p. 129, sec. 63.

Does not apply to corporations not formed under this subchapter. *Morgan v. Howard*, 51 W. L. R. (Ct. App.) 761 (1923).

SEC. 628. Such book shall, during the usual business hours of the day, on every business day, be open for inspection of stockholders and creditors of the company and their personal representatives, at the office or principal place of business of such company in the District where its business operations shall be located, and any stockholder, creditor, or representative shall have a right to make extracts from such books.

R. S. D. C. sec. 580; Comp. Stat. D. C. p. 130, sec. 64.

Under common law, stockholder can inspect books only when his interests are directly involved, and "it is apparent that in equity and good faith he should be permitted to inform himself as to how the affairs of the corporation are being conducted. * * * Where that right has not been enlarged by statute, it may be exercised only in good faith, and for some just, useful, or reasonable purpose. *Morgan v. Howard*, cited under sec. 627.

SEC. 629. TRANSFERS.—A person in whose name shares of stock stand on the books of a company shall be deemed the owner thereof as regards the company, but if any such person shall in good faith sell, pledge, or otherwise dispose of any of his shares of stock to another and deliver to him the certificate for such shares, with written authority for the transfer of the same on the books, the title of the former shall vest in the latter so far as may be necessary to effect the purpose of the sale, pledge, or other disposition, not only as between the parties themselves, but also as against the creditors of and subsequent purchasers from the former, subject to the provisions of section six hundred and fourteen.

R. S. D. C. sec. 581; Comp. Stat. D. C. p. 130, sec. 65.

While certificates of stock indorsed in blank "do not become negotiable instruments in a strictly legal sense, they nevertheless so approximate them as that the ordinary rules of agency and estoppel which apply in the case of chattels are applied to them with great liberality in the behalf of an innocent purchaser." *National Safe Deposit Co. v. Hibbs*, 32 App. D. C. 459 (1909); 37 W. L. R. 90, affirmed in 229 U. S. 391. Although corporation may require that transfer of stock be registered on the corporate books, the assignee upon delivery with transfer and power of attorney to transfer on the books, duly executed, takes the entire equitable, if not the legal title thereto. *Ib.* The requirement of transfer on the corporate books is intended for the convenience and security of the corporation alone. *Ib.* Stock broker, holding certificate, indorsed in blank, for a limited purpose, may convey good title to innocent purchaser. *Ib.* As to rights of innocent purchaser, see also *National Safe Deposit Co. v. Gray*, 12 App. D. C. 276 (1898); 26 W. L. R. 179.

Scanlan v. Snow, 2 App. D. C. 137 (1894); 22 W. L. R. 62.

SEC. 630. Such book shall be presumptive evidence of the facts therein stated in favor of the plaintiff in any suit or proceeding against such company or against any one or more stockholders.

R. S. D. C., sec. 582; Comp. Stat. D. C., p. 130, sec. 66.

SEC. 631. INSPECTION OF BOOKS.—Every officer or agent of any company who shall neglect to make any proper entry in such book, or shall refuse or neglect to exhibit the same, or allow the same to be inspected and extracts to be taken therefrom, as herein provided, shall be deemed guilty of a misdemeanor, and the company shall pay to the party injured a penalty of fifty dollars for any such neglect or refusal, and all damages resulting therefrom.

See section 628.

R. S. D. C., sec. 583; Comp. Stat. D. C., p. 130, sec. 67.

SEC. 632. Every company that shall neglect to keep such book open for inspection, as provided in section six hundred and twenty-eight, shall forfeit to the United States the sum of fifty dollars for every day it shall so neglect, to be sued for and recovered in the supreme court of the District.

R. S. D. C., sec. 584; Comp. Stat. D. C., p. 130, sec. 68.

SEC. 633. INCREASE OR DIMINUTION OF STOCK.—Any company which may be formed under this subchapter may increase or diminish its capital stock, by complying with the provisions of this subchapter, to any amount which may be deemed sufficient and proper for the purposes of the corporation, and may also extend its business to any other business authorized hereby, subject to the provisions and liabilities of this subchapter.

R. S. D. C., sec. 585; Comp. Stat. D. C., p. 130, sec. 69.

Dancy v. Clark, 24 App. D. C. 487 (1905); 33 W. L. R. 18.

SEC. 634. Before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital.

R. S. D. C., sec. 586; Comp. Stat. D. C., p. 130, sec. 70.

Royal Glue Co. v. Lange, 40 App. D. C. 9 (1913); 41 W. L. R. 89.

SEC. 635. Whenever any company shall desire to call a meeting of the stockholders for the purpose of increasing or diminishing the amount of its capital stock, or for extending or changing its business, it shall be the duty of the trustees or directors to publish a notice, signed by a majority of them, in a newspaper in the District, at least three successive weeks, and to deposit a notice thereof in the post-office addressed to each stockholder at his usual place of residence, at least three weeks previous to the day fixed upon for holding such meeting, specifying the object of the meeting and the time and place when and where such meeting shall be held.

R. S. D. C., sec. 588; Comp. Stat. D. C., p. 131, sec. 72.

"Extension of business is the taking in of something cognate." *Dancy v. Clark*, 24 App. D. C. 487 (1905); 33 W. L. R. 18. "A company organized for the making of cotton goods might well be extended to the manufacture of woolen goods, possibly even to the manufacture of iron or steel, for it is all manufacture." *Ib.* "Provision is made for a change of business; but even if we assume that this change might be made to a radically different class of business, as for example, from that of mining to that of agriculture, yet the very word 'change' implies the abandonment of the one by the adoption of the other, not the combination of both." *Ib.*

SEC. 636. If, at any time and place specified in the notice provided for in the preceding section, stockholders shall appear by proxy or in person representing not less than two-thirds of all the shares of stock of the corporation, they shall organize and proceed to a vote of those present or by proxy.

R. S. D. C., sec. 589; Comp. Stat. D. C., p. 131, sec. 73.

SEC. 637. If, on canvassing the votes, it shall appear that a sufficient number of votes are in favor of increasing or diminishing the amount of capital, or extending or changing the business of the company, a certificate of the proceedings, showing a compliance with the provisions of this subchapter, the amount of capital actually paid in, the business to which it is extended or changed, the whole amount of debts and liabilities of the company, and the amount to which the capital shall be increased or diminished, shall be made out, signed, and verified by the affidavit of the chairman, and be countersigned by the secretary.

R. S. D. C., sec. 590; Comp. Stat. D. C., p. 131, sec. 74.

SEC. 638. Such certificate shall be acknowledged by the chairman, and filed as required by section six hundred and six, and when so filed the capital stock of such corporation shall be increased or diminished to the amount specified in the certificate, and the business extended or changed accordingly; and the company shall be entitled to the privileges and provisions and be subject to the liabilities of this subchapter.

R. S. D. C., sec. 591; Comp. Stat. D. C., p. 131, sec. 75.

SEC. 639. A vote of at least two-thirds of all the shares of the stock of a company shall be necessary to an increase or diminution of the amount of its capital stock or the extension or change of its business.

R. S. D. C., sec. 592; Comp. Stat. D. C., p. 131, sec. 76.

SEC. 639a. That any corporation organized under the laws of the District of Columbia may change its name in the manner following:

The board of directors shall pass a resolution declaring that such change is advisable and calling a meeting of the stockholders to take action thereon. Such a meeting shall be called upon such notice as the by-laws provide, and in the absence of such provision upon ten days' notice given personally to each stockholder as his address is contained in the records of such corporation, a notice deposited in the United States mail, postage prepaid, at least ten days prior to such meeting to be considered sufficient notice under this Act. If two-thirds in interest of each class of stockholders having voting powers and of other persons having like powers shall vote in favor of such a change, a certificate thereof shall be signed by the president and secretary, under the corporate seal, and acknowledged as in the case of deeds of real estate, and such certificate shall be filed in the office of the recorder of deeds of the District of Columbia, and upon the filing of the same the certificate of incorporation shall be deemed to be amended and the name changed accordingly; and the filing of said certificate in conformity with this Act shall have the same force and effect as to all future proceedings as if said certificate of incorporation or organization had been originally drafted in conformity with the amendment so made.

That a certified copy of such certificate shall be taken and accepted as evidence in all courts and places of all matters legally stated therein; and the recorder of deeds shall keep an index in his office showing the new name and the change from the old name, and the old name showing the change to the new name; and no fees shall be required by the recorder of deeds for filing and recording any such certificate, except that ordinarily required for deeds of real estate of like length.

That a corporation under its new name shall have the same rights, powers, and privileges, and shall be subject to the same duties, obligations, and liabilities as before, and may sue and be sued by its new name, but no action brought against it or by it under its former name shall be abated on that account, and on motion of either party the new name may be substituted therefor in the action.

That upon the filing of said certificate for record a copy thereof shall be inserted, by the corporation whose name has been changed as hereinabove provided, once each week for four consecutive weeks, in two daily papers published in the District of Columbia.

Section 639a, interpolated by act of March 1, 1921 (41 Stat. L. pt. 1, p. 1194).

SEC. 640. COPY OF CERTIFICATE TO BE EVIDENCE.—A copy of any certificate of incorporation filed in pursuance of this subchapter, certified by the recorder of deeds to be a true copy and the whole of such certificate, shall be received in all courts and places as presumptive legal evidence of the facts therein stated.

R. S. D. C., sec. 593, Comp. Stat. D. C., p. 131, sec. 77.

SEC. 641. TITLE AND FIRE INSURANCE COMPANIES MAY BECOME PERPETUAL.—Any company heretofore formed, agreeably to law, for the purpose of insuring titles to real estate, or for the purpose of carrying on fire insurance, may become perpetual by filing, in the office of the recorder of deeds, a certificate to that effect, in like manner as is provided by law for the filing of the original certificate of incorporation.

Morgan v. Howard, 51 W. L. R. (Ct. App.), 761 (1923).

SEC. 642. SALE OF UNCLAIMED FREIGHT, AND SO FORTH.—Whenever any freight, baggage, or other property transported by a common carrier to, or deposited with a common carrier at, any point in the District of Columbia, shall remain unclaimed by the owner or consignee, or the charges thereon shall remain unpaid for the space of six months after arrival at the point to which the same shall have been directed or transported, or after deposit as aforesaid, and the owner or person to whom the same is consigned, or by whom the same shall have been deposited, shall, after notice of such arrival, or after notice to take away such property so deposited, neglect or refuse to receive the same and pay the charges thereon within such period of six months, then it shall be lawful for such carrier to sell such freight, baggage, or other property at public auction, after giving three weeks' notice of the time and place of sale, once a week for three successive weeks, in a newspaper published in the District of Columbia.

SEC. 643. Upon the application of such carrier, verified by affidavit, to the supreme court of the District of Columbia holding a special term, setting forth that the place of residence of the owner or consignee of any such freight, baggage, or other property is unknown, or that such freight, baggage, or other property is of such perishable nature, or so damaged, or showing any other cause that shall render it impracticable to give the notice or delay the sale for the period provided in the next preceding section, then it shall be lawful for such court to make an order authorizing the sale of such freight, baggage, or other property upon such terms as to notice as the nature of the case may admit of and to such court shall seem meet: *Provided*, That in case of perishable property the affidavit and proceedings required and authorized by this section may be had before a justice of the peace *in cases where the value of the property involved does not exceed three hundred dollars*.

32 Stat. L. pt. 1, p. 534, adding "in cases where the value, etc."

SEC. 644. The residue of moneys arising from any such sale, under either of the two next preceding sections, after deducting the amount of charges, including charges for transportation, the cost of handling and storage, demurrage, and the costs and expenses of proceedings to authorize the sale, and of advertising and sale, shall be paid to the owner of such freight, baggage, or other property on demand.

SUBCHAPTER FIVE

INSURANCE COMPANIES

SEC. 645. DEPARTMENT OF INSURANCE.—There shall be, and is hereby, established in the District a department of insurance, under

the direction of the Commissioners of the District. The said Commissioners are authorized and directed to appoint a superintendent of insurance, at an annual salary of *three thousand five hundred* dollars, and one clerk, at an annual salary of one thousand dollars. The said superintendent and clerk shall devote their services exclusively to the business of said department. Said superintendent shall have supervision of all matters pertaining to insurance, insurance companies, and beneficial orders and associations, subject only to the general supervision of the Commissioners.

32 Stat. L. pt. 1, p. 534.

Drake v. U. S. ex rel. Bates, 30 App. D. C. 312 (1908) ; 36 W. L. R. 140 (see sec. 646 infra).

SEC. 646. DUTIES OF SUPERINTENDENT, AND SO FORTH.—It shall be the duty of said superintendent to see that all laws of the United States relating to insurance or insurance companies, benefit orders, and associations doing business in the District are faithfully executed; to keep on file in his office copies of the charters, declarations of organization, or articles of incorporation of every insurance company, benefit association, or order, including life, fire, marine, accident, plate-glass, steam-boiler, burglary, cyclone, casualty, live-stock, credit, and maturity companies or associations doing business in the District; and before any such insurance company, association, or order shall be licensed to do business in the District it shall file with said superintendent a copy of its charter, declaration of organization, or articles of incorporation, duly certified in accordance with law by the insurance commissioners or other proper officers of the State, Territory, or nation where such company or association was organized; also a certificate setting forth that it is entitled to transact business and assume risks and issue policies of insurance therein, *and such other information as said superintendent may require*; and if its principal office is located outside the District it shall appoint some suitable person, resident in said district, as its attorney, upon whom legal process may be served: *Provided, however, that should said company or association neglect or refuse to appoint such attorney, or should such attorney absent himself from the District, said legal process may be served upon the superintendent of insurance of the District of Columbia*; and the fees for filing with the superintendent such papers as are required by this section shall be ten dollars, to be paid to the collector of taxes, and no other license fee shall be required of such insurance companies or associations except as provided in sections six hundred and fifty-four and six hundred and fifty-five of this subchapter. Said superintendent shall have power to make such rules and regulations, subject to the general supervision of the commissioners, not inconsistent with law, as to make the conduct of each company in the same line of insurance conform in doing business in the District.

Act of January 17, 1912 (37 Stat. L. pt. 1, p. 53).

See section 654.

"No provision of the law conferred or attempted to confer upon the superintendent of insurance the power to make and enforce an interpretation of the laws relating to insurance companies, agents, or brokers. Such power is a judicial one, that can be exercised by the courts alone." Drake v. U. S. ex rel.

Bates, 30 App. D. C. 312 (1908); 36 W. L. R. 140. As to his power to promulgate regulations for the proper enforcement of the law, see *ib.*

Sections 646 and 647 relative to filing copies of charter, etc., "were intended to apply to companies organized without the District and doing business within the District." *Insurance Co. v. Drake*, 30 App. D. C. 263 (1908); 36 W. L. R. 69.

SEC. 647. ANNUAL STATEMENTS.—The said superintendent shall furnish, in December of each year, to every insurance company or association, local, domestic, and foreign, doing business in the District of Columbia, or its agent or attorney in the District, the necessary blank forms for the annual statements for such company or association, which shall be returned to the superintendent on or before the first day of March in each year, signed and sworn to by the president or vice president and secretary or assistant secretary, or, if a foreign company, by its manager or proper representative within the United States, showing its true financial condition as of the next preceding thirty-first day of December, which shall include a statement of its assets and liabilities classified according to regulations made by the Superintendent of Insurance on that day, the amount and character of business transacted, losses sustained, and money received and expended during the year, and such other information as the said superintendent may deem necessary. Such annual statements shall be printed in at least one daily newspaper published in the District of Columbia, in the month of March in each year; and any such company or association failing to comply with the provisions aforesaid shall have its license to do business in the District revoked.

Act of August 18, 1911 (37 Stat. L. pt. 1, p. 22).

32 Stat. L. p. 534.

See cases cited under section 646.

SEC. 648. PAID-UP CAPITAL REQUIRED, AND SO FORTH.—No fire insurance company, except mutual fire insurance companies organized in the District of Columbia under special act of Congress or the general laws of said District, or mutual companies of other States licensed to do business in the said District, which has a paid-up capital of less than one hundred thousand dollars, shall be permitted to do business therein, and all life and fire insurance companies or associations licensed to do business in said District shall be required to maintain a reinsurance reserve fund; and whenever any such company or association not excepted from the operations hereof shall become insolvent or impaired to the extent of twenty-five per centum of its capital stock it shall be the duty of the superintendent to suspend its license; and unless such impairment or insolvency shall be made good within sixty days thereafter, it shall be the duty of the superintendent of insurance to revoke its license to do business in the District; and it shall be unlawful for any insurance company, association, or order to do business in the District without a license, or to continue business after the revocation of its license, and any such company or association violating this provision shall be liable to a penalty of twenty dollars for each day it transacts business without such license, to be recovered by the Commissioners of the District by an action of debt in any court of the District of competent jurisdiction. And any person who shall aid in carrying on

the business of any such company, or shall act as agent or solicitor for any company not licensed to do business in said District, or whose license is revoked, shall be guilty of a misdemeanor, and on conviction thereof in the police court of said district shall be punished by a fine not exceeding one hundred dollars, or, in default of payment thereof, by imprisonment in the jail of the District for not less than ten nor more than sixty days. And the superintendent of insurance shall issue such license to any such insurance company or association whenever it shall have complied with the provisions of section six hundred and forty-six of this subchapter, subject, however, to the provisions of sections six hundred and fifty-four and six hundred and fifty-five thereof: *Provided*, That the superintendent of insurance shall have power to make an official examination into the affairs of any insurance company or association organized under the laws of the District of Columbia, or having its principal office therein, at his discretion, for the purpose of ascertaining whether such company is impaired or insolvent, as aforesaid.

See cases cited under section 646.

SEC. 649. DEPOSIT REQUIRED OF FOREIGN COMPANIES.—No insurance company or association organized outside the territorial limits of the United States shall be licensed to do business in the District until it shall have complied with the laws of some one of said States requiring a deposit of not less than one hundred thousand dollars, or deposited in the registry of the supreme court of the District United States or municipal bonds, the market value of which shall be not less than one hundred thousand dollars, to be approved by the superintendent of insurance and the Commissioners of the District, to be held and maintained unimpaired in the registry of said court as a reserve fund for the liquidation of any judgment or judgments that may be obtained against such insurance company or association in said court or any inferior court of competent jurisdiction in said District; and the financial statements of insurance companies or associations, required hereby to be filed annually with the superintendent of insurance, shall set forth specifically the assets, liabilities, and conduct of the affairs of such companies or associations within the United States, and such statement shall be verified under oath by the manager and assistant manager or other proper officers of such companies or associations within the United States; and so much of this subchapter as requires the publication of annual statements shall only extend to the statements respecting the affairs of such foreign companies or associations within the United States.

SEC. 650. STATEMENT OF BUSINESS IN DISTRICT OF COLUMBIA.—Every insurance company and association doing business in the District of Columbia shall, through its local agents or representatives, furnish to the superintendent, during the month of January of each year, a statement of its business in said District, setting forth specifically the net amount of its premium receipts, the amount of losses paid, the amount of expenses incurred, respecting the business done in the District during the calendar year next preceding, and said superintendent shall preserve a separate record of the same in his office for convenient reference, showing the ratio of such losses and expenses, respectively, to said premium receipts, and all insurance

companies of every description, except mutual fire insurance companies, shall pay to the collector of taxes before March first of each year a sum equal to one and one-half per centum of said premium receipts of the last preceding calendar year, in lieu of all other taxes, except taxes upon real estate and any license fees provided for in sections six hundred and fifty-four and six hundred and fifty-five; and upon the failure of any company to pay said taxes before March first, as aforesaid, the license of said company shall be revoked and a penalty of eight per centum per month shall be charged against said company, which, together with said taxes, shall be collected before said company shall be allowed to resume business.

This section does not apply to assessment companies, organized solely for mutual protection. *Insurance Co. v. Drake*, 30 App. D. C. 263 (1908); 36 W. L. R. 69.

See act of July 1, 1902 (32 Stat. L., pt. 1, p. 617), construed in *D. C. v. Georgetown Gas Light Co.*, 45 App. D. C. 63 (1916); 44 W. L. R. 258, relative to taxation of banks, gas, electric, and telephone companies, and continuing taxation on insurance companies in accordance with section 650.

SEC. 651. SUPERINTENDENT TO MAKE ANNUAL REPORT.—The superintendent of insurance shall report annually to the Commissioners of the District, on or before the thirty-first day of March, the financial condition of each insurance company and association doing business in said District, as of the thirty-first day of December next preceding.

Insurance Co. v. Drake, 30 App. D. C. 263 (1908); 36 W. L. R. 69.

SEC. 652. INQUIRIES AS TO DISTRICT COMPANIES.—It shall be the duty of the said superintendent of insurance to ascertain whether the capital required by law or the charter of each insurance company or association organized under the laws of the District of Columbia has been actually paid up in cash and is held by its board of directors subject to their control, according to the provisions of their charter, or has been invested in property worth not less than the full amount of the capital stock required by its charter; or, if a mutual company, that it has received and is in actual possession of securities, as the case may be, to the full extent of the value required by its charter; and the president and secretary of such company or association shall make a declaration under oath to said superintendent, who is hereby empowered to administer oaths when hereby required, that the tangible assets exhibited to him represent bona fide the property of the company or association, which sworn declaration shall be filed and preserved in the office of said superintendent; and any such officer swearing falsely in regard to any of the provisions hereof shall be deemed guilty of perjury and shall be subject to all the penalties now prescribed by law in the District of Columbia for that crime.

Insurance Co. v. Drake, 30 App. D. C. 263 (1908); 36 W. L. R. 69.

HEALTH, ACCIDENT, AND LIFE INSURANCE COMPANIES OR ASSOCIATIONS

SEC. 653. Every corporation, joint-stock company, or association not exempt herein, transacting business in the District of Columbia, which collects premiums, dues, or assessments from its members or from holders of its certificates or policies, and which provides for the payment of indemnity on account of sickness or accident, or a benefit

in case of death, shall be known as "health, accident, and life insurance companies or associations." After ninety days from the passage of this Act no such company or association shall transact business within the District of Columbia unless it shall have in assets or in capital stock fully paid up in cash, or in both together, not less than twenty-five thousand dollars as a capital or guarantee fund; which assets may be invested in United States, State, county, municipal bonds, and bonds of the District of Columbia, or railroad bonds; but investments in the bonds of railroads shall be limited to the bonds of those railroads which have paid dividends on their capital stocks for the ten years immediately previous to the date of the investment; or in improved real estate, or in first mortgages on improved real estate; but no loan on real estate shall be made for an amount exceeding seventy per centum of its assessed value, such investments to be approved by the superintendent of insurance of the District of Columbia. No such health, accident, and life insurance company or association, now or hereafter transacting the business of health, accident, and life insurance, or either or all said kinds of insurance, in the District of Columbia shall issue policies or certificates providing, either singly or in aggregate, a greater accident or death benefit than five hundred dollars, or a greater weekly indemnity than twenty dollars, on any one person unless such company or association has in assets or in capital stock fully paid up in cash, or in both together, not less than one hundred thousand dollars invested and approved as aforesaid. Every such company or association shall pay to the collector of taxes for the District of Columbia a sum of money, as tax, equal to one per centum of all moneys received from members of policy or certificate holders within the District of Columbia, said tax to be paid on or before the first day of March of each year on the amount of such income for the year ending December thirty-first next preceding; and shall also file annually with said superintendent of insurance, on or before the first day of March of each year, a sworn statement, on blanks furnished by said superintendent of insurance, showing its true financial condition, income, disbursements, assets, and liabilities on the thirty-first day of December next preceding, and such other information as said superintendent of insurance may require; and shall pay to the said collector of taxes ten dollars for filing such statement. Said superintendent of insurance shall examine from time to time and at least as often as once a year all companies or associations described herein; and when he finds the capital stock of any such company impaired or its assets reduced in value to an amount less than required by the provisions hereof he shall at once give notice of said fact to said company or association, and unless said impairment is made good within sixty days after said notice, it shall be the duty of said superintendent to revoke or suspend the license of said company or association until such impairment shall have been made good; and any company or association that issues policies or certificates of insurance as described herein without a license from said superintendent or during a suspension thereof, as herein provided, shall be fined not less than twenty dollars nor more than one hundred dollars per day: *Provided*, That if any such company or association shall feel aggrieved by the decision of said superintendent concerning the investment or impairment of its assets or

capital stock, it shall have the right to appeal, within ten days, from the decision of said superintendent to the Board of Commissioners of the District of Columbia, who shall prescribe rules and regulations for the hearing of said appeal, and their decision shall be final: *Provided also*, That when any such company or association shall have complied with the provisions contained herein, the superintendent of insurance shall issue to it a license to transact its business in the District of Columbia: *Provided, however*, That nothing contained herein shall interfere with or abridge the rights of any fraternal beneficial association licensed to transact business under subchapter twelve of chapter eighteen of the Code of Law for the District of Columbia, or incorporated by special act of Congress: *And provided further*, That nothing contained herein shall apply to any relief association, not conducted for profit, composed solely of officers and enlisted men of the United States Army or Navy, or solely of employees of any other branch of the United States Government service, or solely of employees of any individual, company, firm, or corporation.

SEC. 2. That all Acts and parts of Acts inconsistent herewith be, and the same are hereby, repealed: *Provided*, That nothing herein contained shall repeal or affect the other provisions of subchapter five of chapter eighteen of the Code of Law for the District of Columbia regulating foreign corporations, or corporations, associations, or companies who are nonresidents of the District of Columbia (to whom the provisions of this Act shall also be applicable), or the provisions of section six hundred and fifty-two of said code relating to inquiry into the affairs of District companies.

Act approved August 15, 1911 (37 Stat. L. pt. 1, p. 16), repealing 31 Stat. L., pt. 1, p. 1189.

SEC. 654. INSURANCE AGENTS.—No person, firm, or corporation shall act as agent for any insurance company or association, or act as insurance broker or agent for procuring or placing insurance for commissions, compensation, gain, or profit, without first having obtained a license as an insurance agent or broker from the superintendent of insurance of the District. Every such license certificate shall have printed conspicuously upon its face the words "General insurance license," and for such license the sum of fifty dollars shall be paid annually in the month of March to the collector of taxes of said District. All licenses for insurance companies, their agents, or solicitors, who may apply for permission to do business in the District of Columbia shall date from the first of the month in which application is made and expire on the thirtieth day of April following, and payment shall be made in proportion. No person, firm, or corporation, or association shall allow or pay any commission, rebate, or compensation whatever, directly or indirectly, to, for, or in behalf of any person, firm, or corporation doing business in the District of Columbia not licensed as herein provided. Any violation of this section shall be a misdemeanor and, on conviction in the police court of said District, be subject to the penalties provided in section six hundred and forty-eight aforesaid for the misdemeanors therein described: *Provided*, That licenses to firms, corporations, or associations shall be held to extend only to the bona fide copartners, not exceeding two in one firm, and to the secretary and one assistant secretary of each corporation or association so licensed, any one of whom may be held

and dealt with on behalf of such firm, corporation, or association for any violation of the provisions hereof: *And provided further*, That all moneys paid as fines under the provisions hereof shall be turned over to the proper custodian of the relief or pension fund of the fire department of the District, to be used and accounted for agreeably to the then existing rules for the use of such relief or pension fund.

Superintendent of insurance does not have power "to make regulations for the classification of persons required to take out a 'general insurance license' by the provisions of section 654." *Drake v. U. S. ex rel. Bates*, 30 App. D. C. 312 (1908); 36 W. L. R. 140. Broker licensed under this section may act as agent for any company authorized to do business in the District. *Ib.* "All insurance companies are compelled to comply with the provisions of the several sections relating to them before they can carry on business. * * * The companies are under no obligation to apply for licenses for their agents or brokers. They must apply for their own licenses." *Ib.*

An agent licensed to represent one company is entitled to apply for and receive another license to represent another company. *U. S. ex rel. Kreh v. Ingram*, 38 App. D. C. 379 (1912); 40 W. L. R. 231. And the issuance of such license may be compelled by mandamus. *Ib.*

SEC. 655. FRATERNAL ASSOCIATIONS, AND SO FORTH.—Nothing herein contained shall be held to interfere with or abridge the rights of, or apply to, any fraternal beneficial societies, orders, or associations under the act of Congress entitled "An act regulating fraternal beneficial associations in the District of Columbia," approved March third, eighteen hundred and ninety-seven, the provisions of which are embodied in subchapter twelve of this chapter, except that the superintendent of insurance herein provided for shall be substituted for and perform all the duties in said act of Congress assigned to the assessor of the District of Columbia: *Provided*, That any insurance company or agent licensed to do business in the District of Columbia may employ solicitors, and the license fee to be paid for each solicitor so employed shall be five dollars per year, payable in the month of March, and such license shall have printed on its face the words "Insurance solicitor's license," and shall contain the name of the company for which such solicitor is employed, and no other: *Provided*, That nothing herein contained shall be held to prevent any life or fire insurance company from carrying on the business commonly known as industrial insurance, and the license fee to be paid for solicitors for such industrial insurance shall be two dollars for every such solicitor, to be paid in the month of March in each year. Such license certificate shall have conspicuously printed on its face "Industrial insurance license," and shall also express upon its face the name of the company for which such solicitor is employed; and any certificate of license granted under this section or the next preceding section may be assigned, upon application to the superintendent of insurance, by canceling the old certificate and issuing a new one of like tenor to the assignee for the unexpired term, for which assignment a fee of twenty-five cents shall be paid to the collector of taxes; and any person who shall act as solicitor for any such insurance company, without having first procured such license therefor, or shall solicit for any company other than the one named in such license, shall be guilty of a misdemeanor and, on conviction thereof in the police court of said District, be punished by a fine of not less than ten dollars nor more than fifty dollars, and in default of payment of such fine by imprisonment in the jail of said District

for a term of not less than ten days nor more than thirty days, at the discretion of the court: *Provided*, That nothing in this subchapter shall be held to prevent any life insurance company organized in the District of Columbia under special act of Congress, but which has discontinued writing new insurance, from collecting premiums or dues upon any undetermined policies under which such company has liabilities, provided such company has sufficient assets and reserves to safely meet such liabilities.

SEC. 656. **WAGERING POLICIES.**—No insurance shall be made by any person or persons, bodies politic or corporate, on any ship or ships, or on any goods, merchandise, or effects laden or to be laden on board of any ship or ships, interest or no interest, or without further proof of interest than the policy, or by way of gaming or wagering, or without benefit of salvage to the insurer; and every such insurance shall be null and void to all intents and purposes.

SEC. 657. **COPY OF APPLICATION TO BE DELIVERED WITH POLICY.**—Each life insurance company, benefit order and association doing a life insurance business in the District of Columbia shall deliver with each policy issued by it a copy of the application made by the insured so that the whole contract may appear in said application and policy, in default of which no defense shall be allowed to such policy on account of anything contained in, or omitted from, such application.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 534), repealing 31 Stat. L. pt. 1, p. 1294.

See 24 Stat. L. p. 367.

Prior to its amendment by the act of June 30, 1902, *supra*, section 657 "did not cover policies (certificates) issued by fraternal beneficial associations." *Brotherhood of Trainmen v. Groves*, 48 App. D. C. 151 (1918); 46 W. L. R. 707, certiorari denied, 248 U. S. 587. Grand Lodge of Brotherhood of Railroad Trainmen is a benefit order, within the meaning of the section, as amended, and subject to its provisions. *Ib.* Misstatement of age is no defense where copy of application was not delivered "with the policy or at any other time." *Ib.* "No provision in the rules or elsewhere of an insurance company or fraternal order which was not physically embodied in the policy or application should be regarded as a part of the contract." *Ib.* As to incorporation by reference, see *ib.* See also *Royal Arcanum v. Behrend*, 45 App. D. C. 260 (1916); 44 W. L. R. 151; reversed 247 U. S. 394.

This provision applies to an application for the reinstatement of a lapsed policy. *Insurance Co. v. Burch*, 39 App. D. C. 397 (1912); 41 W. L. R. 50. "The section was intended to remedy a mischief and is to be given a liberal interpretation to that end." *Ib.*

A preliminary report, signed only by the agent, intended for the general information of the company and not referred to in the policy, is no part of the contract of insurance and need not be attached thereto. *Griffin v. Insurance Co.*, 36 App. D. C. 8 (1910); 38 W. L. R. 429.

Copy of entire application must be attached; "it is not left to the discretion of the insurer to select such parts of the application as it may deem material for delivery with its policy." *Life Insurance Co. v. Hawkins*, 31 App. D. C. 493 (1908); 36 W. L. R. 429.

SUBCHAPTER SIX

CEMETERY ASSOCIATIONS

SEC. 658. **HOW INCORPORATED.**—When five or more persons shall associate themselves together for the purpose of forming a cemetery association in the District, such persons shall have the power to adopt a corporate name, and by that name shall be known as a body corporate, and by that name shall have perpetual succession and be in-

vested with all powers, rights, privileges, liabilities, and immunities incident to corporations, and may have a common seal, and may alter or change the same at their pleasure.

R. S. D. C., secs. 594 et seq.; Comp. Stat. D. C., p. 131, secs. 178 et seq.

SEC. 659. **POWERS.**—Such persons so associated shall have power to acquire by gift, grant, or purchase any lot or lots of land not exceeding fifty acres, and lay out the same for a burial place for the dead, with convenient aisles, and to sell the same for such purpose and for no other purposes, reserving a sufficient portion thereof for the burial of the stranger and indigent.

SEC. 660. They shall cause the land designed as a burial ground to be surveyed and platted, and a plat of the ground so surveyed shall be recorded in the office of the surveyor of the District. Each lot shall be duly numbered by the surveyor and such number shall be marked on the plat and recorded.

SEC. 661. Such association shall have power to inclose and ornament their burial ground, to build and erect a hearse house, and keep the same in proper repair; to purchase a hearse or hearses, and to do all other necessary acts to the end that all the appliances, conveniences, and benefits of a public and private cemetery may be obtained.

SEC. 662. The proceeds arising from the sale of lots, after deducting all expenses of purchasing and laying out the same, shall be applied, appropriated, and used in improving and ornamenting the burial ground, or for other purposes named in this subchapter.

SEC. 663. **OFFICERS.**—The officers of any such corporation shall be a president, a treasurer (who shall act as a secretary), and not less than three directors, who shall be severally chosen annually by ballot, and shall hold office until their successors are chosen. Any neglect to choose officers on the day fixed upon for that purpose shall not operate as a forfeiture of the act of incorporation, in accordance with the provisions of this subchapter.

SEC. 664. The first election of officers by the persons associating, according to and for the purpose specified in section six hundred and fifty-eight, shall be at the time and place designated and agreed upon by a majority of the persons so associating themselves together, and no other than such persons shall vote at such election.

SEC. 665. **VOTERS.**—At each subsequent election of officers of any such corporation the owner of a lot in said burial ground shall be entitled to one vote in the election of officers of the corporation and no more, and shall, by virtue of such membership, be a member of the corporation.

SEC. 666. **BY-LAWS.**—Each corporation shall have power to establish and change by-laws and prescribe rules and regulations for its government and the duties of its officers and the management of its property.

SEC. 667. **EXEMPTION FROM TAXATION.**—The property of any such corporation, its grounds, lots, and appliances, shall be exempt from taxation and shall not be liable to sale on execution.

SEC. 668. **DEDICATION.**—Any person desiring to dedicate any lot of land, not exceeding five acres, as a burial place for the interment of the dead for the use of any society, association, or neighborhood may, by deed duly executed and recorded, convey such land to the District of Columbia, by the corporate name of said District of Colum-

bia, specifying in such deed the society, association, or neighborhood for the use of which the dedication is desired to be made, and thereby (provided such conveyance shall be accepted by the Commissioners of the District of Columbia) vest the title to such land in perpetuity, for the uses stated in the deed, and such land shall be thereafter exempt from taxes for all purposes whatever.

SEC. 669. GRANTS AND BEQUESTS FOR CARE OF LOTS.—It shall be lawful for such association to take and hold any grant, donation, or bequest upon trust to apply the income thereof, under the direction of the board of managers, for the embellishment, preservation, renewal, or repair of any tomb, monument, gravestone, or other structure, fence, railing, or other inclosure in or around any cemetery lot, or for the planting and cultivation of any trees, shrubs, flowers, or plants in or around any cemetery lot, according to the terms of such grant, donation, or bequest; and the supreme court of the District of Columbia shall have full power and jurisdiction to compel the due performance of such trusts, or any of them, upon a bill filed by the proprietor of any lot in such cemetery for that purpose.

See section 1023.

Iglehart v. Iglehart, 204 U. S. 478 (1907), affirming 26 App. D. C. 209; 33 W. L. R. 711.

SEC. 670. DISTANCE FROM CITY AND FROM DWELLINGS.—No person or persons or cemetery association shall lay out any new cemetery, or part of any cemetery, within the city of Washington, in the District of Columbia, nor in said District, within one mile and a half from the boundaries of said city; no person or cemetery association shall, in said District, lay out any cemetery, or part of any cemetery, within less than two hundred yards of any dwelling house, except with the written consent of the owner, lessee, and occupant of such house, nor without a permit to do so from the Commissioners of said District.

SEC. 671. INCLOSURES.—It shall be the duty of the owner or owners of any cemetery or cemeteries in said District to inclose such cemetery or cemeteries with good and sufficient walls or fences to prevent entrance thereto or exit therefrom except by gates provided for that purpose. Such cemetery or cemeteries shall, if required by the Commissioners of said District, be underdrained to such a depth as will prevent water remaining in any grave or vault therein.

SEC. 672. LOTS AND PLATS.—It shall be the duty of the owner or owners of any cemetery or cemeteries in said District to divide the area to be used for graves into lots of reasonable size, to be permanently designated by conspicuous marks, so that the position of each may be readily determined, each lot to be duly numbered. A plat of such cemetery showing the area so divided, the division into lots, and the number of each such lot shall be filed in the office of the surveyor of said District; the grave spaces hereafter laid out for the burial of persons above ten years of age to be at least eight feet by three feet, and those for the burial of children under ten years of age at least six feet by two feet, or, if preferred by said owner or owners, one-half the measurement of the adult grave space, namely, four feet by three feet.

SEC. 673. REGISTER.—It shall be the duty of the owner or owners of any cemetery or cemeteries in said District to cause to be kept in the office of the superintendent or person in charge of such cemetery or cemeteries a register showing the number of each lot, the name, age, cause of death, and date of burial of each person or persons buried in any such lot or grave space, and the number of the burial permit authorizing such burial. In cases of disinterment said register shall show the date of such disinterment and the number of the official permit therefor opposite the name of the person whose remains are disinterred. Such register shall be at all times open to inspection by duly authorized representatives of the health department and of the police department of said District.

SEC. 674. SUPERINTENDENT TO REGISTER AT HEALTH DEPARTMENT.—It shall be the duty of the superintendent or person in charge of any cemetery or other place for the disposal of dead bodies of human beings in the District of Columbia to register his or her name at the office of the health department of said District, giving full name, residence, and place of business, and in case of removal from one place to another in said District to make change in such register accordingly.

SEC. 675. REMOVAL OF DEAD BODIES.—No dead body of any human being or any part of such body shall, in said District, be removed from place to place, interred, disinterred, or in any manner disposed of without a permit for such removal, interment, disinterment, or disposal granted by the health officer of said District, nor otherwise than in accordance with the terms of said permit; permits for the removal, interment, or disposal to be issued upon the presentation of a proper death certificate, signed by a physician registered at the health department of said District, who has attended the deceased during his or her last illness, or by the coroner of said District or his deputy, or by the proper municipal, county, or State authorities at the place where the death occurred; permits for disinterment (including permission to reinter or transport the body disinterred) to be issued upon the written application of the nearest relative or the legal representative of the deceased; and no superintendent or other person in charge of any cemetery in said District or other place for the disposal of dead bodies shall assist in or assent to or allow any such interment, disinterment, or disposition to be made in such cemetery or place until permit shall be given as aforesaid. It shall be the duty of every such superintendent or other person who shall receive any such permit aforesaid to indorse thereon the date of the interment, disinterment, or disposal, and to preserve, sign, and return the same to the health officer of said District before six o'clock postmeridian of the Saturday following the day of burial, disinterment, or disposal.

In a prosecution for homicide, it is not error to admit testimony relative to the disinterment and postmortem examination of the body of the deceased, notwithstanding the fact that the Government gave no notice of its intention to make such an examination; "nor is it material whether or not there was full compliance with the provisions of section 686 of the District of Columbia Code." *Laney v. U. S.* 52, W. L. R. (Ct. App.) 38 (1923).

SEC. 676. CONVEYANCE THROUGH THE DISTRICT.—No dead body or part of the dead body of any human being shall be in any manner carried or conveyed from, in, to, or through said District by any person,

or by means of any boat, vessel, car, stage, or other vehicle, or by any public or private conveyance, without a permit therefor first granted by the health officer of said District: *Provided*, That bodies or parts of dead bodies aforesaid, except such as have died of Asiatic cholera, yellow fever, typhus fever, smallpox (including varioloid), leprosy, the plague, diphtheria, or scarlet fever, may be brought into said District, or carried through the same in transit, upon a permit of the proper municipal, county, or State authorities of the place at which such person died; and whenever the remains of any deceased person have been conveyed, transferred, or removed beyond the limits of said District it shall be the duty of the person or agent or officer of the corporation having charge of such conveyance, transfer, or removal to detach, date, sign, and return to the health officer the permit authorizing such conveyance, transfer, or removal before six o'clock postmeridian of the Saturday following the day of such conveyance, transfer, or removal of said remains.

SEC. 677. REPORTS OF DEATH.—It shall be the duty of any person or persons having custody or control of the dead body of any human being or any part of such body to report in writing or cause to be reported in writing, to the health officer of said District, within forty-eight hours after the death of the deceased, the name of said deceased and the location of the body or part thereof. No such body or part thereof shall be kept in said District in such manner as to give rise to any offensive odors to the annoyance of any person or persons in the neighborhood or to the public, nor so as to be exposed to the public view; nor shall any such body or part thereof be permitted by the person or persons having custody or control of it to remain unburied for a longer period than one week after death without permission of the health officer, unless it has been cremated or deposited in the vault of some cemetery; nor shall any person publicly exhibit in said District, for pay or otherwise, any dead body of any human being or any part of such body without a permit from the health officer of said District so to do, except such exhibition be in connection with some Government museum or with some institution of learning permanently located in said District.

SEC. 678. PLACE OF BURIAL.—No person shall bury or cause to be buried within said District the body or part of the body of any deceased person, except in such grounds as are now known and used as public or private burial grounds, or such as shall hereafter be designated by the Commissioners of said District and authorized by them to be used as such.

SEC. 679. MODE OF BURIAL.—No body shall be buried in said District in any vault unless the coffin be separately entombed in properly cemented stone or brick work, so as to render such vault air-tight; such vault, after having been sealed, shall not be opened within ten years; no body shall be temporarily deposited in any vault for a longer period than one month, unless such body is in an hermetically sealed metallic case, nor in any instance for a longer period than one year.

SEC. 680. REOPENING GRAVES.—No grave in said District shall be reopened, except for the purpose of disinterment, within ten years after the burial of a person above twelve years of age, or within eight years after the burial of a child under twelve years of age,

unless the grave has been, in the first instance, of sufficient depth to permit subsequent interments, in which case a layer of earth of not less than one foot thick shall be left undisturbed over the previously buried coffin, unless such coffin has been separately entombed in properly cemented stone or brick work; but if on reopening any grave the soil be found to be offensive, such soil shall not be disturbed. In no case shall a grave be opened in which has been buried the body of any person who has died of Asiatic cholera, yellow fever, typhus fever, smallpox (including varioloid), leprosy, the plague, tetanus, diphtheria, or scarlet fever.

SEC. 681. DEPTH OF GRAVES.—No coffin shall be buried in said District so that any part thereof is within less than four feet of the ordinary level of the ground, unless it contains the body of a child under twelve years of age, when it shall not be less than three feet below that level.

SEC. 682. CREMATION.—No person shall, in the District of Columbia, build or maintain a crematory or other device for destroying human bodies, except within the limits of some duly established cemetery in said District, unless such person or persons has in writing the consent of the owners of more than one-half of the property within a radius of two hundred feet from the place where such crematory is to be erected and maintained and a permit from the Commissioners of said District for the erection and maintenance of such crematory or other device; such permit to be for a term of years, not exceeding five, to be specified therein: *Provided*, That this section shall not apply to such crematories or other devices for destroying human bodies as may have been erected and are in operation at the time of the passage of this law.

SEC. 683. PERMIT TO CREMATE; EMBALMING.—It shall be unlawful for any person or persons to cremate or otherwise to destroy the dead body, or part of the dead body, of any human being in said District before the issue of the burial permit by the health officer of said District, and then only when said permit is countersigned by the coroner of said District, authorizing such cremation or destruction. It shall be unlawful for any person or persons to embalm, inject, or by any similar method preserve the dead body, or part of the dead body, of any human being in said District within four hours after death or before the issue of the death certificate; and in case the death is believed to be due to other than natural causes, or the cause thereof is unknown, such embalming, injecting, or preserving shall at no time be done unless such death certificate has been signed or approved by the coroner of said District.

SEC. 684. PENALTY.—Any person who shall violate or aid and abet in violating any of the provisions of this subchapter shall, upon conviction thereof by competent judicial authority, be punished, for each offense, by a fine of not more than two hundred dollars, or by imprisonment for not more than ninety days, or both.

SEC. 685. PROSECUTIONS.—Prosecutions hereunder shall be in the police court of the District of Columbia, in the name of said District: *Provided*, That any person or persons so tried shall have the privilege, when demanded, of a trial by jury, and in other jury cases in said police court.

SEC. 686. DISINTERMENT BY ORDER OF COURT.—Nothing herein shall be construed to interfere with or prevent the disinterment, of any body when such disinterment is ordered by one of the justices of the supreme court of the District of Columbia, or by the coroner of said District, *after due notice to the Commissioners of the District of Columbia*. The provisions hereof shall not be held to interfere with the disposal of the ashes of bodies which have been cremated.

See section 675 and case cited.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 534).

SUBCHAPTER SEVEN

BUILDING ASSOCIATIONS

SEC. 687. CERTIFICATE OF ORGANIZATION.—Any five or more persons who desire to form an incorporated building or homestead association, all being citizens of the United States, and a majority of them residents of the District of Columbia, may make, sign, seal, and acknowledge, before some officer authorized to take the acknowledgment of deeds, and file for record in the office of the recorder of deeds, a certificate, in writing, to the same effect as that required in subchapter four of this chapter, aforesaid, for the formation of the corporations therein mentioned.

SEC. 688. When such certificate shall have been filed for record as aforesaid, the persons who have signed and acknowledged the same, and their successors, shall become and be a body politic and corporate, in fact and in law, by the name stated in the certificate, and by that name have succession and be capable of suing and being sued in the courts of the District, and of purchasing, holding, and conveying such real estate as may be necessary to the conduct of its business, and to make reasonable by-laws not inconsistent herewith.

SEC. 689. POWERS AS TO STOCK.—Such corporation shall have power, in its certificate of incorporation or in its by-laws, to provide that its shares of stock may be issued in series; to limit the number of shares which each stockholder may be allowed to hold; to prescribe the entrance fee to be paid by each stockholder at the time of subscribing, and to regulate the installments to be paid on each share and the times at which they shall be payable. It shall also have power to enforce the payment of all installments and other dues by such fines and forfeitures as its by-laws may from time to time provide.

SEC. 690. Any person applying for membership or stock after a month from the time of the incorporation may be required to pay on subscribing such bonus or assessment as may be fixed by said by-laws in order to place said new members or stockholders on a footing with the original members and others holding stock at the time of such application.

SEC. 691. OBJECTS.—The object of such corporation shall be the accumulation of a capital in money to be derived from the savings and accumulations by the members thereof, to be paid into said corporation in such sums and at such times as may be designated by the by-laws of said corporation, from which the members thereof may obtain advances upon their shares of stock: *Provided*, That the

Comptroller of the Currency, in addition to the powers conferred upon him by law for the examination of national banks, is further authorized, whenever he may deem it useful, to cause examination to be made into the condition of any building association incorporated under the provisions of this chapter, as well as any other building or loan association located or doing business in the District of Columbia. The expenses necessarily incurred in making any such examination shall not exceed the sum of twenty-five dollars for the first five hundred thousand dollars or fractional part thereof of assets and the sum of ten dollars for each additional two hundred and fifty thousand dollars or fractional part thereof of assets, and be paid by such association to the Comptroller of the Currency at the time of the making of such examination: *And provided further*, That every building or loan association located and doing business in the District of Columbia shall make to the Comptroller of the Currency at least one report during each year, according to the form which may be prescribed by him, verified by the oath or affirmation of the president or secretary of such association and attested by the signature of at least three of the directors. The said Comptroller shall also have power to take possession of any company or association whenever in his judgment it is insolvent or is knowingly violating the laws under which such company is incorporated, and to liquidate the same in the manner provided in the laws of the United States in respect to national banks: *Provided further*, That from and after the first day of July anno Domini nineteen hundred and nine, no person, company, association, copartnership, or corporation shall conduct or carry on in the District of Columbia the kind of business named in this Act, without strict compliance in all particulars with the provisions of this Act: *Provided*, That building associations heretofore organized and in actual operation before the passage of this Act need not be incorporated. Any person, officer, or agent of any company, firm, or corporation who shall willfully violate any of the provisions of this section shall be deemed guilty of a misdemeanor, and shall on conviction thereof be punished by a fine of not more than one thousand dollars or by imprisonment not longer than two years, or by both said punishments, in the discretion of the court. That any willful false swearing in regard to any certificate, or report, or public notice required by the provisions of this Act shall be perjury, and shall be punished as such according to the laws of the District of Columbia. And any misappropriation of any of the money of any corporation or company, formed under or availing itself of the privileges of this Act, or of any building or loan association located or doing business in the District of Columbia, or any money, funds, or property intrusted to any such corporation, company, or association, shall be held to be larceny and shall be punished as such under the laws of said District.

Act of March 4, 1909 (35 Stat. L. pt. 1, p. 1058), repealing 31 Stat. L. pt. 1, p. 1189.

SEC. 691 a. That any building association incorporated or unincorporated, organized and existing under the laws of any State or Territory, except the District of Columbia, to do or now doing, in the District of Columbia, a building association business or otherwise operating as a building association, shall be subject to all the provisions

of the foregoing section of this Act in respect of the powers of the Comptroller of the Currency hereunder, and, any such association or corporation shall at all times keep on deposit with the Comptroller of the Currency in money or stocks, bonds or mortgages or other securities to be approved by said officer not less than ten per centum of its capital and surplus as security for its depositors and creditors, and as a guarantee for the faithful performance of its contracts, and may also make such further deposit of its assets as above described with the Comptroller for such purpose as it may from time to time desire so to do.

Interpolated by act of March 4, 1909 (35 Stat. L. pt. 1, p. 1058).

SEC. 692. ADVANCEMENTS.—The moneys accumulated from time to time shall be offered to such shareholder or shareholders as shall bid the highest premium for preference or priority of right to an advancement of the ultimate value of one or more of his or their respective shares. The said premium shall consist of a percentage on the amount of the advance and shall be deemed to be a consideration or bonus paid by the shareholder for the present and immediate use and possession of the future or ultimate value of the share so advanced, and shall not be deemed usurious. The said premium may either be deducted in advance from the amount to be advanced to the shareholder or be made payable in monthly installments, in addition to legal interest on the sum advanced, as the by-laws may provide.

As to relationship between association and borrowing stockholder, see *Croissant v. Realty Co.*, 29 App. D. C. 538 (1907); 35 W. L. R. 350, citing with approval, *Armstrong v. B. & L. Assoc.* 15 App. D. C. 1; 27 W. L. R. 351; *B. & L. Assoc. v. Olmsted*, 16 App. D. C. 387; 38 W. L. R. 409

As to usurious interest charged by unincorporated building and loan association, see *Whelpley v. Ross*, 25 App. D. C. 207 (1905); 33 W. L. R. 371; compare also *Middle States Loan Co. v. Baker*, 19 App. D. C. 1 (1901); 29 W. L. R. 783. This section is not retroactive. *Washington B. & L. Assoc. v. Fiske*, 20 App. D. C. 514 (1902); 30 W. L. R. 761, *certiorari denied*, 188 U. S. 740.

SEC. 693. For every advance made as aforesaid a bond in a penalty equal to the ultimate value of the shares advanced may be required, secured by a first mortgage or deed of trust on real estate, and a pledge of the shares advanced upon, as additional or collateral security, which bond shall be conditioned for the payment at the stated meetings of the corporation of the monthly dues on the share so advanced upon and the interest on the sum advanced, and the installments of premium, if made so payable, and all fines chargeable upon arrears of payments, until said shares shall reach their ultimate value aforesaid, or said advance be otherwise canceled or discharged.

SEC. 694. PROFITS.—The shares advanced upon shall participate equally with the other shares in the profits and the amounts paid by the advanced shareholders, together with such proportion of the profits accrued or such rate of interest as said by-laws may determine, the same as allowed on shares withdrawn not advanced upon, less all fines and a proportionate part of losses and other charges incurred.

SEC. 695. REDEMPTION OF SHARES.—Where advances from the funds on hand can not be made on satisfactory terms, the shareholders failing to bid therefor, the by-laws may provide for the redemption of shares of stock, with the consent of the shareholders, and

in case that can not be done, for the involuntary withdrawal and cancellation of shares, the said shares to be selected by lot, always from the oldest series, until exhausted, or the funds to be applied ratably among the owners of shares of the same series.

SEC. 696. **WITHDRAWAL.**—A shareholder shall be entitled to withdraw at any time, by giving such notice as the by-laws may require, where no advance has been made on his shares, in which case he shall be entitled to receive the amount of dues paid in by him on each of his shares, together with such proportion of the profits accrued or such rate of interest as said by-laws may determine, less all fines due and a proportionate part of all losses and other charges incurred: *Provided*, That not more than one-half of the funds in the treasury at any time shall be applicable to the demands of the withdrawing shareholders without the consent of the board of trustees.

SEC. 697. **REPAYMENT OF ADVANCES.**—A shareholder who has been advanced may at any time repay his advance upon application to the corporation, whereupon, on settlement of his account, he shall be charged with the full amount of the advance and of the accrued installments of the premium, if that has been added to the advancement and made payable in installments, together with all monthly dues, interest, and fines accrued and charged, and shall receive credit for all monthly dues paid on his shares and the profits thereon the same as are allowed under the by-laws on shares withdrawn not advanced upon, and, if the premium has been deducted in advance, with such proportion of the premium as the by-laws may direct, and the balance remaining due, over and above such credits, shall be received by said corporation in satisfaction and discharge of said advance: *Provided*, That in case of the insolvency of the association, he shall not be entitled to credit for the full amount of dues paid by him, but shall only be entitled to a dividend upon said amount, in common with the nonadvanced shareholders.

SEC. 698. **FORFEITURE.**—Any nonadvanced shareholder failing to pay the installments due on his share and the fines due from him for such time as the by-laws shall determine, shall forfeit his stock, but may, on application, receive a return of the amount paid in on account of his stock, less the accrued fines.

SEC. 699. **FORECLOSURE.**—In case any advanced shareholder shall fail to pay all dues, interest, or premiums and shall be in arrears for any part of the same for the period of two months, the payment of the same and of the principal of the advance may be enforced by a foreclosure of the securities given for the same, and if upon a statement of account, as in case of a voluntary settlement of said advance, as hereinbefore authorized, there shall be any surplus of the proceeds of sale of the property given as security over the amount found due from such advanced shareholder, together with all costs incurred by the corporation, such surplus shall be paid to said defaulting shareholder, or his assigns, and his shares of stock so advanced upon shall be the property of the corporation.

SEC. 700. **REAL ESTATE.**—Such corporation shall not invest its funds in any real estate except what is necessary for the conduct of its business, but may purchase such property at sales made upon

foreclosure of mortgages or in satisfaction of judgments or other liens held by it: *Provided*, That such property so purchased be sold within a reasonable time thereafter.

SUBCHAPTER EIGHT

BOARD OF TRADE

SEC. 701. **HOW INCORPORATED.**—Any number of persons, not less than twenty, residing in the District, may associate themselves together as a board of trade, and assemble at any time and place upon which a majority of the members so associating may agree, and elect a president and one or more vice-presidents, as they may see fit, and adopt a name, constitution, and by-laws, such as they may agree upon.

SEC. 702. Such persons shall thereupon become a body corporate and politic in fact and in name, by the name and style or title which they may have adopted, and by that name shall have succession, shall be capable in law to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all the courts of law and equity; and they and their successors shall have a common seal, and may alter and change the same at their discretion.

SEC. 703. Such corporation, by the name and style which shall be adopted, shall be capable in law of purchasing, holding, and conveying any estate, real or personal, for the use of the corporation, not exceeding in quantity one city lot and building in the District.

SEC. 704. **OFFICERS.**—The president, vice-president, secretary, and treasurer shall be ex officio members of the board of directors, and, together with the directors elected, shall manage the business of the corporation.

SEC. 705. **ELECTIONS.**—All officers shall be elected by a plurality of votes given at any election, and a general election of officers shall be held at least once in each year; but in case of any accidental failure or neglect to hold such general election the corporation shall not thereby lapse or terminate, but shall continue and exist, and the old officers shall hold over until the next general election of officers provided for in the constitution adopted.

SEC. 706. **TENURE OF OFFICE.**—The officers shall hold their offices for the time which shall be prescribed in the constitution adopted by the corporation and until others shall be elected and qualified as prescribed by such constitution.

SEC. 707. **BY-LAWS.**—Such corporation shall have the right to admit as members such persons as they may see fit, and expel any members as they may see fit; and in all cases a majority of the members present at any stated meetings shall have the right to pass, and also the right to repeal, any by-law of the corporation; and in all cases the constitution and by-laws adopted by the corporation shall be binding upon and control the same until altered, changed, or abrogated in the manner that may be prescribed in such constitution.

SEC. 708. **FINES.**—Such corporation may inflict fines upon any of its members, and collect the same, for breach of the provisions of the constitution or by-laws; but no fine shall in any case exceed twenty-

five dollars. Such fines may be collected by action of debt, brought in the name of the corporation, before a justice of the peace, against the person upon whom the fine shall have been imposed.

SEC. 709. WHAT BUSINESS TO BE CARRIED ON.—Such corporation shall have no power or authority to do or carry on any business excepting such as is usual in the management and conduct of boards of trade or chambers of commerce and is provided for in the preceding sections of this subchapter.

R. S. D. C. secs. 605-612, 617; Comp. Stat. D. C. pp. 133 et seq.

SUBCHAPTER NINE

STREET RAILWAYS

SEC. 710. REMOVAL OF DISUSED TRACKS.—Whenever the track or tracks, or any part thereof, of any street railway company in the District of Columbia shall not have been regularly operated for railway purposes upon a schedule *as required by its charter* for a period of three months, the Commissioners of said District, in their discretion, may thereupon notify such company to remove said unused tracks and to place the street in good condition; and if such company shall neglect or refuse to remove said tracks and place the street in good condition within sixty days after such notice, the said company shall be deemed guilty of a misdemeanor and shall be liable to a fine of ten dollars for each and every day during which said tracks are permitted to remain upon the street or streets, or said roadway shall remain out of repair, which fine shall be recovered in the police court of said District, in the name of said District, as other fines and penalties are now recovered in said court.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 534).

SEC. 711. USING OTHER COMPANY'S LINES.—It shall be unlawful for any street railway company operating its system or parts of its system over any portion of the underground electric lines owned and operated by another street railway company in the city of Washington to continue such operation, or to enter into reciprocal trackage relations with any other company, as provided for under existing law, unless its motive power for the propulsion of its cars shall be the same as that of the company whose tracks are used or to be used. For every violation of this subchapter the company violating it shall be subject to a fine of ten dollars for every car operated in violation of the provisions of this subchapter, said fine to be collected and applied in the same manner as is provided by the preceding section.

SEC. 712. FREE TRANSFERS.—All street railway companies within the District of Columbia now operating their systems, or parts of their systems, in the city of Washington by use of the tracks of one or more of such companies, under a reciprocal trackage agreement, as provided for under existing law, which shall be compelled to discontinue the use of the tracks of another company, shall issue free transfers to their patrons from one system to the other at such junctions of their respective lines as may be provided for by the Commissioners of the District of Columbia.

SUBCHAPTER TEN

SAVINGS BANKS

SEC. 713. All savings banks, or savings companies, or trust companies, or other banking institutions, organized under authority of any Act of Congress to do business in the District of Columbia, or organized by virtue of the laws of any of the States of this Union, and having an office or banking house located within the District of Columbia where deposits or savings are received, shall be, and are hereby, required to make to the Comptroller of the Currency and to publish all the reports which national banking associations are required to make and publish under the provisions of sections fifty-two hundred and eleven, fifty-two hundred and twelve, and fifty-two hundred and thirteen of the Revised Statutes of the United States, and shall be subject to the same penalties for failure to make such reports as are therein provided, which penalties may be collected by suit before the supreme court of the District of Columbia. And the Comptroller shall have power, when in his opinion it is necessary, to take possession of any such bank or company, for the reasons and in the manner and to the same extent as are provided in the laws of the United States with respect to national banks: *Provided, however,* That banking institutions having offices or banking houses in foreign countries as well as in the District of Columbia shall only be required to make and publish the reports provided for in this section semiannually: *And provided further,* That all publications authorized or required by said section fifty-two hundred and eleven of the Revised Statutes, and all other publications authorized or required by existing law to be made in the District of Columbia, shall be printed in two or more daily newspapers of general circulation, published in the City of Washington, one of which shall be a morning newspaper.

Act of June 25, 1906 (34 Stat. L., pt. 1, p. 458), repealing 31 Stat. L., p. 1189 as amended by act of June 30, 1902 (32 Stat. L., pt. 1, p. 534).

SEC. 714. The Comptroller of the Currency, in addition to the powers now conferred upon him by law for the examination of national banks, is hereby further authorized, whenever he may deem it useful, to cause examination to be made into the condition of any bank mentioned in the preceding section. The expense of such examination shall be paid in the manner provided by section fifty-two hundred and forty of the Revised Statutes of the United States relating to the examination of national banks.

Act of June 25, 1906 (34 Stat. L., pt. 1, p. 458), repealing 31 Stat. L., pt. 1, p. 1189.

SUBCHAPTER ELEVEN

TRUST, LOAN, MORTGAGE, AND CERTAIN OTHER CORPORATIONS

SEC. 715. FOR WHAT PURPOSES TO BE FORMED.—Corporations may be formed within the District of Columbia for the purposes hereinafter mentioned in the following manner:

At any time hereafter any number of natural persons, citizens of the United States, not less than twenty-five, may associate themselves

together to form a company for the purpose of carrying on, in the District of Columbia, any one of the three classes of business herein specified, to wit:

First. A safe deposit, trust, loan, and mortgage business.

Second. A title insurance, loan, and mortgage business.

Third. A security, guarantee, indemnity, loan, and mortgage business: *Provided*, That the capital stock of any of said companies shall not be less than one million dollars, and that any of said companies may also do a storage business when their capital stock amounts to the sum of not less than one million two hundred thousand dollars.

Act of October 1, 1890 (26 Stat. L., p. 625).

SEC. 716. ORGANIZATION CERTIFICATE.—Such persons shall, under their hands and seals, execute before some officer in said District competent to take the acknowledgment of deeds, an organization certificate, which shall specifically state—

First. The name of the corporation.

Second. The purposes for which it is formed.

Third. The term for which it is to exist, which shall not exceed the term of fifty years, and be subject to alteration, amendment, or repeal by Congress at any time.

Fourth. The number of its directors and the names and residences of the officers who for the first year are to manage the affairs of the company.

Fifth. The amount of its capital stock and its subdivision into shares.

SEC. 717. POWER OF COMMISSIONERS OF THE DISTRICT.—This certificate shall be presented to the Commissioners of the District, who shall have power and discretion to grant or refuse to said persons a charter of incorporation upon the terms set forth in the said certificate and the provisions of this subchapter.

SEC. 718. NOTICE OF APPLICATION TO COMMISSIONERS.—Previous to the presentation of the said certificate to the said Commissioners, notice of the intention to apply for such charter shall be inserted in two newspapers of general circulation, printed in the District of Columbia, at least four times a week for three weeks, setting forth briefly the name of the proposed company, its character and object, the names of the proposed corporators, and the intention to make application for a charter on a specified day; and the proof of such publication shall be presented with said certificate when presentation thereof is made to said Commissioners.

SEC. 719. RECORDING CHARTER, AND SO FORTH.—If the charter be granted as aforesaid, it, together with the certificate of the Commissioners granting the same indorsed thereon, shall be filed for record in the office of the recorder of deeds for the District of Columbia, and shall be recorded by him. On the filing of the said certificate with the said recorder of deeds as herein provided, approved as aforesaid by the said Commissioners, the persons named therein and their successors shall thereupon and thereby be and become a body corporate and politic, and as such shall be vested with all the powers and charged with all the liabilities conferred upon and imposed by this subchapter upon companies organized under the provisions hereof: *Provided, however*, That no corporation created and organ-

ized under the provisions hereof, or availing itself of the provisions hereof as contained in section seven hundred and twenty-five, shall be authorized to transact the business of a trust company, or any business of a fiduciary character, until it shall have filed with the Comptroller of the Currency a copy of its certificate of organization and charter, and shall have obtained from him and filed the same for record with the said recorder of deeds, a certificate that the said capital stock of said company has been paid in and the deposit of securities made with said Comptroller in the manner and to the extent required by this subchapter.

SEC. 720. REPORTS TO COMPTROLLER.—All companies organized hereunder, or which shall, under the provisions hereof, become entitled to transact the business of a trust company, shall report to the Comptroller of the Currency in the manner prescribed by sections fifty-two hundred and eleven, fifty-two hundred and twelve, and fifty-two hundred and thirteen of the Revised Statutes of the United States in the case of national banks, and all acts amendatory thereof or supplementary thereto, and with similar provisions for compensating examiners, and shall be subject to like penalties for failure to do so. The Comptroller shall have and exercise the same visitatorial powers over the affairs of the said corporation as is conferred upon him by section fifty-two hundred and forty of the Revised Statutes of the United States in the case of national banks. He shall also have power, when in his opinion it is necessary, to take possession of any such company for the reasons and in the manner and to the same extent as are provided in the laws of the United States with respect to national banks.

SEC. 721. SPECIAL POWERS.—All companies organized under this subchapter are hereby declared to be corporations possessed of the powers and functions of corporations generally, and shall have power—

First. To make contracts.

Second. To sue and be sued, plead and be impleaded, in any court as fully as natural persons.

Third. To make and use a common seal and alter the same at pleasure.

Fourth. To loan money.

Fifth. When organized under subdivision one of section seven hundred and fifteen of this subchapter, to accept and execute trusts of any and every description which may be committed or transferred to them, and to accept the office and perform the duties of receiver, assignee, executor, administrator, collector of estate or property of any decedent, guardian of the estate of minors with the consent of the guardian of the person of such minor, and committee of the estates of lunatics and idiots whenever any trusteeship or any such office or appointment is committed or transferred to them, with their consent, by any person, body politic or corporate, or by any court in the District of Columbia; and all such companies organized under the first subdivision of section seven hundred and fifteen of this subchapter are further authorized to accept deposits of money for the purposes designated herein, upon such terms as may be agreed upon from time to time with depositors, and to act as agent for the purpose of issuing or countersigning the bonds or obligations of any corporation, asso-

ciation, municipality, or State, or other public authority, and to receive and manage any sinking fund on any such terms as may be agreed upon, and shall have power to issue its debenture bonds upon deeds of trust or mortgages of real estate to a sum not exceeding the face value of said deeds of trust or mortgages, and which shall not exceed fifty per centum of the fair cash value of the real estate covered by said deeds or mortgages, to be ascertained by the Comptroller of the Currency; but no debenture bonds shall be issued until the securities on which the same are based have been placed in the actual possession of the trustee named in the debenture bonds, who shall hold said securities until all of said bonds are paid; and when organized under the second subdivision of section seven hundred and fifteen of this subchapter said company is authorized to insure titles to real estate and to transact generally the business mentioned in said subdivision; and when organized under the third subdivision of section seven hundred and fifteen of this subchapter said company is hereby authorized, in addition to the loan and mortgage business therein mentioned, to secure, guarantee, and insure individuals, bodies politic, associations, and corporations against loss by or through trustees, agents, servants, or employees, and to guarantee the faithful performance of contracts and obligations of whatever kind entered into by or on the part of any person or persons, association, corporation, or corporations, and against loss of every kind: *Provided*, That any corporations formed under the provisions of this subchapter when acting as trustee shall be liable to account for the amounts actually earned by the moneys held by it in trust in addition to the principal so held; but such corporation may be allowed a reasonable compensation for services performed in the care of the trust estate.

See section 262.

SEC. 722. MAY BE APPOINTED TRUSTEE, EXECUTOR, AND SO FORTH.—In all cases in which application shall be made to any court in the District of Columbia, or wherever it becomes necessary or proper for said court to appoint a trustee, receiver, administrator, collector, guardian of the estate of a minor, or committee of the estate of a lunatic, it shall and may be lawful for said court (but without prejudice to any preference in the order of any such appointments required by existing law) to appoint any such company organized under the first subdivision of section seven hundred and fifteen of this subchapter, with its assent, such trustee, receiver, administrator, collector, committee, or guardian, with the consent of the guardian of the person of such minor: *Provided, however*, That no court or judge who is an owner of or in any manner financially interested in the stock or business of such corporation shall commit by order or decree to any such corporation any trust or fiduciary duty.

SEC. 723. OATH.—Whenever any corporation operating under this code shall be appointed such trustee, executor, administrator, collector, receiver, assignee, guardian, or committee, as aforesaid, the president, vice-president, secretary, or treasurer of said company shall take the oath or affirmation now required by law to be made by any trustee, executor, administrator, collector, receiver, assignee, guardian, or committee.

SEC. 724. STOCK TO BE SECURITY.—When any court shall appoint the said company a trustee, receiver, administrator, collector, or such guardian or committee, or shall order the deposit of money or other valuable with said company, or where any individual or corporation shall appoint any of said companies a trustee, executor, assignee, or such guardian, the capital stock of said company subscribed for or taken, and all property owned by said company, together with the liability of the stockholders and officers as herein provided, shall be taken and considered as the security required by law for the faithful performance of its duties, and shall be absolutely liable in case of any default whatever.

See section 262.

SEC. 725. EXISTING COMPANIES.—Any safe-deposit company, trust company, surety or guaranty company, or title insurance company now incorporated and operating under the laws of the United States in the District of Columbia or of any of the States, and now doing business in said District, may avail itself of the provisions of this subchapter on filing in the office of the recorder of deeds of the District of Columbia, or with the Comptroller of the Currency, a certificate of its intention to do so, which certificate shall specify which one of the three classes of business set out in section seven hundred and fifteen it will carry on, and shall be verified by the oath of its president to the effect that it has in every respect complied with the requirements of existing law, especially with the provisions of this subchapter, that its capital stock is paid in as provided in section seven hundred and thirty-five of this subchapter and is not impaired; and thereafter such company may exercise all powers and perform all duties authorized by any one of the subdivisions of section seven hundred and fifteen of this subchapter in addition to the powers now lawfully exercised by such company.

SEC. 726. Any company operating under this subchapter may lease, purchase, hold, and convey real property in which the offices of the company are located not to exceed in value the capital and surplus of the company, and such in addition as it may acquire in satisfaction of debts due the corporation under sales, decrees, judgments, and mortgages. But no such association shall hold the possession of any real estate under foreclosure of mortgage, or the title and possession of any real estate purchased to secure any debts due to it, for a longer period than five years.

Act of April 19, 1920 (41 Stat. L. pt. 1, p. 566), repealing 31 Stat. L. p. 1189.

SEC. 727. DURATION OF CHARTER.—The charters for incorporations named in this subchapter may be made perpetual, or may be limited in time by their provisions, subject to the approval of Congress.

SEC. 728. CAPITAL STOCK.—The capital stock of every such company shall be at least one million dollars, and at least fifty per centum thereof must have been paid in, in cash or by the transfer of assets as hereinafter provided in section seven hundred and thirty-five of this subchapter, before any such company shall be entitled to transact business as a corporation, except with its own members, and before any company organized hereunder shall be entitled to transact the business of a trust company, or to become

and act as an administrator, executor, guardian of the estate of a minor, or undertake any other kindred fiduciary duty, it shall deposit, either in money or in bonds, mortgages, deeds of trust, or other securities equal in actual value to one-fourth of the capital stock paid in, with the Comptroller of the Currency, to be kept by him upon the trust and for the purposes hereinafter provided; and the said Comptroller may from time to time require an additional deposit from any such company, to be held upon and for the same trust and purposes, not exceeding, however, in value one-half the paid-in capital stock; and the said Comptroller shall not issue to any corporation the certificate heretofore provided for until said deposit with him of securities required by this section. Within one year after the organization of any corporation under the provisions of this subchapter, or after any corporation heretofore existing shall have availed itself of the powers and rights given by this subchapter in the manner herein provided for, its entire capital stock shall have been paid in.

SEC. 729. SHARES.—The capital stock of every such company shall be divided into shares of one hundred dollars each. It shall be lawful for such company to call for and demand from the stockholders, respectively, all sums of money by them subscribed, at such time and in such proportions as its board of directors shall deem proper, within the time specified in section seven hundred and twenty-eight, and it may enforce payment by all remedies provided by law; and if any stockholder shall refuse or neglect to pay any installment, as required by a resolution of the board of directors, after thirty days' notice of the same, the said board of directors may sell at public auction to the highest bidder so many shares of said stock as shall pay said installment, under such general regulations as may be adopted in the by-laws of said company, and the highest bidder shall be taken to be the person who offers to purchase the least number of shares for the assessment due.

SEC. 730. ANNUAL REPORTS TO COMPTROLLER.—Every such company shall annually, within twenty days after the first of January of each year, make a report to the Comptroller of the Currency, which shall be published in a newspaper in the District, which shall state the amount of capital and of the proportion actually paid, the amount of debts, and the gross earnings for the year ending December thirty-first then next previous, together with their expenses, which report shall be signed by the president and a majority of the directors or trustees, and shall be verified by the oath of the president, secretary, and at least three of the directors or trustees; and said company shall pay to the District of Columbia, in lieu of personal taxes for each next ensuing year, one and one-half per centum of its gross earnings for the preceding year, shown by said verified statement, which amount shall be payable to the collector of taxes at the times and in the manner that other taxes are payable.

See section 713.

Cf. act of July 1, 1902 (32 Stat. L. p. 590), cited in *Trust Co. v. D. C.*, 29 App. D. C. 265 (1907); 35 W. L. R. 147.

SEC. 731. LIABILITY OF TRUSTEES.—If any company fails to comply with the provisions of the preceding section, all the directors or trustees of such company shall be jointly and severally liable for the

debts of the company then existing and for all that shall be contracted before such report shall be made: *Provided*, That in case of failure of the company in any year to comply with the provisions of section seven hundred and thirty of this subchapter, and any of the directors shall, on or before January fifteenth of such year, file his written request for such compliance with the secretary of the company, the Comptroller of the Currency, and the recorder of deeds of the District of Columbia, such director shall be exempt from the liability prescribed in this section.

SEC. 732. FALSE SWEARING.—Any willful false swearing in regard to any certificate or report or public notice required by the provisions of this subchapter shall be perjury and shall be punished as such according to the laws of the District of Columbia. Any misappropriation of any of the money of any corporation or company formed under this Act, or of any money, funds, or property intrusted to it, shall be held to be larceny, and shall be punished as such under the laws of said District.

SEC. 733. STOCK PERSONAL ESTATE.—The stock of such company shall be deemed personal estate, and shall be transferable only on the books of such company in such manner as shall be prescribed by the by-laws of the company; but no shares shall be transferable until all previous calls thereon shall have been fully paid, and the said stock shall not be taxable in the hands of individual owners, the tax on the gross earnings of the company hereinbefore provided being in lieu of other personal tax. All certificates of the stock of any company organized under this subchapter shall show upon their face the par value of each share and the amount paid thereon.

SEC. 734. LIABILITY OF STOCKHOLDERS.—All stockholders of every company incorporated under this subchapter, or availing itself of its provisions under section seven hundred and twenty-five, shall be severally and individually liable to the creditors of such company to an amount equal to and in addition to the amount of stock held by them respectively for all debts and contracts made by such company.

SEC. 735. STOCK TO BE PAID UP IN MONEY ONLY.—Nothing but money shall be considered as payment of any part of the capital stock, except that in the case of any company now doing business in the District of Columbia in any of the classes herein provided for, or under any act of Congress, or by virtue of the laws of any of the States, and which company has actually received full payment in money of at least fifty per centum of the capital stock required by this act, and which company desires to obtain a charter under this act, all the assets or property may be received and considered as money at a value to be appraised and fixed by the Comptroller of the Currency: *Provided*, That all such assets and property are also transferred to and are thereafter owned by the company organized under this act.

SEC. 736. NUMBER OF TRUSTEES.—The stock, property, and concerns of such company shall be managed by not less than nine nor more than thirty directors or trustees, who shall, respectively, be stockholders, and at least one-half residents and citizens of the District of Columbia, and shall, except the first year, be annually elected by the stockholders at such time and place and after such

published notice as shall be determined by the by-laws of the company, and said directors or trustees shall hold until their successors are elected and qualified.

See section 713.

SEC. 737. OFFICERS.—There shall be a president of the company, who shall be a director, also a secretary and a treasurer, all of whom shall be chosen by the directors or trustees: *Provided*, That only one of the above-named offices shall be held by the same person at the same time. Subordinate officers may be appointed by the directors or trustees, and all such officers may be required to give such security for the faithful performance of the duties of their offices as the directors or trustees may require.

SEC. 738. BY-LAWS.—The directors or trustees shall have power to make such by-laws as they deem proper for the management or disposal of the stock and business affairs of such company, not inconsistent with the provisions of this subchapter, and prescribing the duties of officers and servants that may be employed, for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of such company.

See section 713.

SEC. 739. DIVIDENDS.—If the directors or trustees of any company shall declare or pay any dividend the payment of which would render it insolvent, or which would create a debt against such company, they shall be jointly and severally liable as guarantors for all the debts of the company then existing, and for all that shall be thereafter contracted while they shall, respectively, remain in office.

SEC. 740. If any of the directors or trustees shall object to declaring such dividends or the payment of the same, and shall at any time before the time fixed for the payment thereof file a certificate of their objection in writing with the secretary of the company and with the recorder of deeds of the District, they shall be exempt from the liability prescribed in the preceding section.

SEC. 741. LIABILITIES EXCEEDING ASSETS.—If the liabilities of any company shall at any time exceed the amount of the fair cash value of the assets, the directors or trustees of such company assenting thereto shall be personally and individually liable for such excess to the creditors of the company, after the additional liability of the stockholders has been enforced.

SEC. 742. EXECUTORS, AND SO FORTH, HOLDING STOCK.—No person holding stock in such company as executor, administrator, guardian, or trustee shall be personally subject to any liability as stockholder of such company, but the estate and funds in the hands of such executor, administrator, guardian, or trustee shall be liable in like manner and to the same extent as the testator or intestate or the ward or the person interested in such trust fund would have been if he had been living and competent to act and hold the stock in his own name.

SEC. 743. INCREASE OF CAPITAL STOCK.—Any corporation which may be formed under this subchapter may increase its capital stock by complying with the provisions of this subchapter to any amount which may be deemed sufficient and proper for the purposes of the corporation.

SEC. 744. COPY OF CERTIFICATE TO BE EVIDENCE.—A copy of any certificate of incorporation filed in pursuance of this subchapter, certified by the recorder of deeds to be a true copy and the whole of such certificate, shall be received in all courts and places as presumptive legal evidence of the facts therein stated.

SEC. 745. NO BOND TO BE REQUIRED WHEN COMPANY APPOINTED EXECUTOR, AND SO FORTH, EXCEPT, AND SO FORTH.—No bond or other collateral security, except as hereinafter stated, shall be required from any trust company incorporated under this subchapter for and in respect to any trust, nor when appointed trustee, guardian, receiver, executor, or administrator with or without the will annexed, collector, committee of the estate of a lunatic or idiot, or other fiduciary appointment; but the capital stock subscribed for or taken, and all property owned by said company and the amount for which said stockholders shall be liable in excess of their stock, shall be taken and considered as the security required by law for the faithful performance of its duties, and shall be absolutely liable in case of any default whatever; and in case of the insolvency or dissolution of said company, the debts due from the said company as trustee, guardian, receiver, executor, administrator, collector, or committee of the estate of lunatics, idiots, or any other fiduciary appointment shall have a preference.

See section 262.

SEC. 746. BOND MAY BE REQUIRED.—The supreme court of the District of Columbia, or any justice thereof, shall have power to make orders respecting such company whenever it shall have been appointed trustee, guardian, receiver, executor, administrator with or without the will annexed, collector, committee of the estate of a lunatic, idiot, or any other fiduciary, and require the said company to render all accounts which might lawfully be made or required by any court or any justice thereof if such trustee, guardian, receiver, executor, administrator with or without the will annexed, collector, committee of the estate of a lunatic or idiot, or fiduciary were a natural person. And said court, or any justice thereof, at any time, on application of any person interested, may appoint some suitable person to examine into the affairs and standing of such companies, who shall make a full report thereof to the court, and said court, or any justice thereof, may at any time, in its discretion, require of said company a bond with sureties or other security for the faithful performance of its obligations, and such sureties or other security shall be liable to the same extent and in the same manner as if given or pledged by a natural person.

SEC. 747. CORPORATIONS ORGANIZED UNDER STATE LAWS.—No corporation or company organized by virtue of the laws of any of the States of this Union and having its principal place of business within the District of Columbia shall carry on in the District of Columbia any of the kinds of business named in this subchapter without strict compliance in all particulars with the provisions of this subchapter for the government of such corporations formed under it, and each one of the officers of the corporation or company so offending shall be punished by a fine not exceeding one thousand dollars or imprisonment not exceeding one year, or by both fine and imprisonment, in the discretion of the court.

SEC. 748. RIGHT TO AMEND OR REPEAL RESERVED TO CONGRESS.—Congress may at any time alter, amend, or repeal this subchapter, but any such amendment or repeal shall not, nor shall the dissolution of any company formed under this subchapter, take away or impair any remedy given against such corporation, its stockholders, or officers for any liability or penalty which shall have been previously incurred.

SUBCHAPTER TWELVE

FRATERNAL BENEFICIAL ASSOCIATIONS

SEC. 749. DEFINED.—A fraternal beneficial association is hereby declared to be a corporation, society, order, or voluntary association, formed or organized and carried on for the sole benefit of its members and their beneficiaries, and not for profit, having a lodge system with ritualistic form of work and representative form of government, making provision for the payment of benefits in case of death. Each such association may make provision for the payment of benefits in case of sickness, temporary or permanent physical disability, either as a result of disease, accident, or old age: *Provided*, That the period in life at which physical disability benefits on account of old age commences shall not be under seventy years, or the age of expectancy from the time of entering, subject to their compliance with its laws. Any such association may create and maintain a reserve, emergency or benefit fund in accordance with its laws. Any such association having a reserve, emergency or benefit fund may, in addition to the benefits hereinbefore named, pay withdrawal benefits, not exceeding the contributions of such member, to a member, unable or unwilling to continue membership, provided such membership shall continue not less than three successive years. Such association may also, after ten years of membership, apply its funds and accumulations as its laws provide or the association and members agree. The fund from which the payment of such benefits shall be made and the fund from which the expenses of such association shall be defrayed shall be derived from assessments, dues, and other payments collected from its members or otherwise. Payment of death benefits shall be to the families, heirs, blood relatives, affianced husband or affianced wife of or to persons dependent upon the member. Such association shall be governed by this subchapter, and shall be exempt from the provisions of insurance laws of the United States relating to the District of Columbia, and no law hereafter passed shall apply to them unless they be expressly designated therein: *Provided, however*, That the fact that any such association has outstanding agreements with its members for the payment of benefits other than those hereinbefore specified, if it is making no new contracts of that character and is retiring those already existing, shall not exclude such association from the operation of this subchapter.

Act of March 3, 1897 (29 Stat. L. p. 630).

As to right of such organizations to modify by-laws or charter so as to affect benefit certificates theretofore issued, see *Brown v. Grand Fountain*, 28 App. D. C. 200 (1906); 34 W. L. R. 750.

As to revision of constitution and by-laws by fraternal organizations see *National Council v. State Council*, 27 App. D. C. 1 (1906) ; 34 W. L. R. 126.

As to reinstatement of member after forfeiture for nonpayment of assessments, see *Supreme Commandery v. Bernard*, 26 App. D. C. 169 (1905) ; 33 W. L. R. 722.

As to agency of local councils for national council see *Prudent Patricians of Pompeii v. Marr*, 20 App. D. C. 363 (1902) ; 30 W. L. R. 563. *Quære*: Whether "a by-law could be sustained which would prohibit recourse to the ordinary tribunals of law." *Ib.* Courts will ordinarily not concern themselves with questions of the good standing of members of such organizations, but when good standing depends solely on payment of dues the civil courts will not hesitate to take cognizance. *Ib.*

See also *Drum v. Benton*, 13 App. D. C. 245 (1898) ; 26 W. L. R. 642. *Moss v. Littleton*, 6 App. D. C. 201 (1895) ; 23 W. L. R. 296. *Berkley v. Harper*, 3 App. D. C. 308 (1894) ; 22 W. L. R. 329.

SEC. 750. EXISTING ASSOCIATIONS.—All such associations coming within the description as set forth in section seven hundred and forty-nine of this subchapter, organized under the laws of the United States relating to said District, or of any State, country, province, or Territory, and now doing business in said District, may continue such business: *Provided*, That they hereafter comply with the provisions of this subchapter regulating annual reports and the designation of the superintendent of insurance of said District, provided for in subchapter five of this chapter, as the person upon whom process may be served as hereinafter provided.

SEC. 751. NONRESIDENT ASSOCIATIONS.—Any such association coming within the description as set forth in section seven hundred and forty-nine of this subchapter, organized under the laws of any State, country, province, or Territory, and not now doing business in said District, shall be admitted to do business within said District when it shall have filed with the superintendent of insurance a duly certified copy of its charter and articles of association and a copy of its by-laws, certified to by its secretary or corresponding officer, together with an appointment of the said superintendent as the person upon whom process may be served as hereinafter provided: *Provided*, That such association shall be shown to be authorized to do business in the State, country, province, or Territory in which it is incorporated or organized, in case the laws of such State, country, province, or Territory shall provide for such authorization; and in case the laws of such State, country, province, or Territory do not provide for any formal authorization to do business on the part of any such association, then such association shall be shown to be conducting its business in accordance with the provisions of this subchapter; for which purpose the said superintendent may personally, or by some person to be designated by him, examine into the condition, affairs, character, and business methods, accounts, books, and investments of such association at its home office, which examination shall be at the expense of such association and shall be made within thirty days after demand therefor, and the expense of such examination shall be limited to fifty dollars. Any association doing business under this subchapter shall be permitted to do business upon filing annually with the superintendent of insurance the certificate of authority of the insurance department of the State, Province, or Territory in which it is incorporated or organized: *Provided, however*, That in case of failure to file said certificate by any such association, or in case the superintendent of insurance shall deem it necessary, he shall

have power, either personally or by some person designated by him, to examine into the condition, affairs, character, business methods, accounts, books, and investments of such association, at its home office, which examination shall be at the expense of the association. The amount of such expense shall not exceed one hundred dollars for associations which have no reserve or emergency fund and two hundred dollars for associations with a reserve or emergency fund.

SEC. 752. ANNUAL REPORTS.—Every such association doing business in said District shall, on or before the first day of March of each year, make and file with the said superintendent a report of its affairs and operations during the year ending on the thirty-first day of December immediately preceding, which annual report shall be in lieu of all other reports required by any other law. Such report shall be upon blank forms to be provided by the said superintendent, or may be printed in pamphlet form, and shall be verified under oath by the duly authorized officers of such association, and shall be published, or the substance thereof, in the annual report of the said superintendent under a separate part entitled “Fraternal Beneficial Associations,” and shall contain answers to the following questions:

First. Number of certificates issued during the year or members admitted.

Second. Amount of indemnity effected thereby.

Third. Number of losses or benefit liabilities incurred.

Fourth. Number of losses or benefit liabilities paid.

Fifth. The amount received from each assessment for the year.

Sixth. Total amount paid members, beneficiaries, legal representatives, or heirs.

Seventh. Number and kind of claims for which assessments have been made.

Eighth. Number and kind of claims compromised or resisted, and brief statement of reasons.

Ninth. Does the association charge annual or other periodical dues or admission fees?

Tenth. If so, how much on each one thousand dollars, annually or per capita, as the case may be?

Eleventh. Total amount received, from what source, and the disposition thereof.

Twelfth. Total amount of salaries paid to officers.

Thirteenth. Does the association guarantee in its certificate fixed amounts to be paid regardless of amount realized from assessments, dues, admission fees, and donations?

Fourteenth. If so, state amount guaranteed and the security of such guaranty.

Fifteenth. Has the association a reserve or emergency fund?

Sixteenth. If so, how is it created, and for what purpose, the amount thereof, and how invested?

Seventeenth. Has the association more than one class?

Eighteenth. If so, how many; and the amount of indemnity in each case.

Nineteenth. Number of members in each class.

Twentieth. If voluntary, so state; and give date of organization.

Twenty-first. If organized under the laws of said District, under what law and at what time, giving chapter and year, and date of passage of the act.

Twenty-second. If organized under the laws of any State, country, province, or Territory, state such fact and the date of organization, giving chapter and year, and date of passage of the act.

Twenty-third. Number of certificates of beneficial membership lapsed during the year.

Twenty-fourth. Number in force at beginning and end of year; if more than one class, number in each class.

Twenty-fifth. Names and addresses of its president, secretary, and treasurer, or corresponding officers.

SEC. 753. NONRESIDENT ASSOCIATIONS TO NAME AN ATTORNEY IN THE DISTRICT.—Each such association now doing or hereafter admitted to do business within said District, and not having its principle office within said District, and not being organized under the laws of the United States relating to said District, shall appoint, in writing, the said superintendent and his successors in office to be its true and lawful attorney, upon whom all lawful process in any action or proceeding against it may be served, and in such writing shall agree that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served upon the association, and that the authority shall continue in force so long as any liability remains outstanding in said District. Copies of said certificate certified by said superintendent shall be deemed sufficient evidence thereof, and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service upon such attorney shall be deemed sufficient service upon such association. When legal process against such association is served upon said superintendent he shall immediately notify the association of such service by letter, prepaid and directed to its secretary or corresponding officer, and shall, within two days after such service, forward in the same manner a copy of the process served on him to such officer. The plaintiff in such process so served shall pay to the said superintendent at the time of such service a fee of three dollars, which shall be recovered by him as a part of the taxable costs if he prevails in his suit. The said superintendent shall keep a record of all processes served upon him, which record shall show the day and hour when such service was made.

SEC. 754. PERMIT FROM SUPERINTENDENT OF INSURANCE.—The said superintendent shall, upon the application of any association having the right to do business within said District, as provided by this subchapter, issue to such association a permit in writing authorizing such association to do business within said District, for which certificate and all proceedings in connection therewith such association shall pay the said superintendent the fee of five dollars.

SEC. 755. CERTIFICATE OF ORGANIZATION; TRUSTEES.—Any nine or more persons, at least one-third of whom shall be residents of the District of Columbia, being desirous of forming a fraternal beneficial association for the purposes set forth in section seven hundred and forty-nine of this subchapter, may associate themselves together and effect such organization as hereinafter prescribed, and not otherwise. Such persons shall make, sign, and acknowledge before any officer authorized to take the acknowledgment of deeds in this District and file in the office of the recorder of deeds of said District a certificate or declaration in writing, to be recorded in a book kept for that purpose and open to public inspection, in which shall be

stated the name or title by which said association shall be known to law; the mode and manner in which the corporate powers granted by this subchapter are to be exercised; the name or official title of the officers, trustees, representatives, or other persons by whatever name or title designated, who are to have and exercise the general control and management of its affairs; the place of doing business defined; the limit as to age of applicants for beneficial membership, which shall not exceed fifty-five years, and that medical examinations are required of applicants for life benefits, together with the sworn statement by three of said corporators that at least one hundred persons eligible under the proposed laws of such association to membership therein have in good faith made application in writing for membership. The recorder of deeds, upon the filing of said declaration, shall deliver to such association a certified copy of the papers so filed and recorded in his office, together with a certificate to such association, stating that the provisions of this subchapter relative to incorporation have been complied with and that said association becomes thereby authorized to carry on the work of a fraternal beneficial association. Upon filing the certificate or declaration as aforesaid, the persons who shall have signed and acknowledged the same, and their successors and associates, shall, by the provisions of this subchapter, be a body politic and corporate by the name and style stated in the certificate, and by that name and style shall have perpetual succession, and by said name may sue and be sued, and may have and use a common seal, and the same may alter and change at pleasure, and may make and alter, at times or from time to time, such laws, not inconsistent with the Constitution of the United States or the laws in force in said District, as they may deem necessary for the government of said association. And they and their successors, by their corporate name, shall in law be capable of creating, maintaining, and disbursing a reserve or emergency fund in accordance with its laws and the provisions of this subchapter, and of taking, receiving, purchasing, and holding real and personal estate necessary for the purpose of such association, and may let, place out at interest, or sell and convey the same as may seem most beneficial for said association. The association shall elect from its members trustees, directors, or managers, by whatever title known in its laws, at such time and place and in such manner as may be specified in its laws, who shall have the control and management of the affairs and funds of said association, a majority of whom shall be a quorum for the transaction of business; and whenever any vacancy shall happen among such trustees, directors, or managers, by death, resignation, or otherwise, such vacancy shall be filled in such manner as shall be provided by the laws of said association.

SEC. 756. REINCORPORATION.—The officers, trustees, directors, or governing body of any existing fraternal beneficial association may, by conforming to the requirements of the several provisions of this subchapter, reincorporate themselves or continue their existing corporate powers under this subchapter, or change their name, stating in their certificate the original name of such corporation as well as their new name assumed, and all the property and effects of such existing corporation shall vest in and belong to the corporation so reincorporated or continued.

SEC. 757. SUBORDINATE BODIES.—Any subordinate body of any fraternal beneficial association incorporated under the provisions of this subchapter, or of such association now doing business or which may hereafter be admitted to do business in this District under this subchapter, where the laws of the governing body of said association do not prohibit the incorporation of their subordinate bodies, may become a body corporate in the manner following: At some regular meeting of such subordinate body a resolution expressing the desire of such subordinate body to be incorporated, and directing its officers to perfect such incorporation, shall be submitted to a vote of the members present, and if two-thirds of the members present vote therefor the president and secretary of such subordinate body, or the officers holding relative offices therein, shall prepare articles of association, under their hands and the seal of such subordinate body, setting forth, first, the number of members of such subordinate body then in good standing; second, the name by which said subordinate body is known; third, the date of its organization and the period for which it is to be incorporated, not exceeding thirty years. A copy of such articles of association shall be filed with the recorder of deeds, and shall by him be recorded, together with the affidavit hereafter named, in a book to be kept for that purpose. On the execution of said articles of association and before the filing thereof with the recorder the secretary of such subordinate body shall annex thereto his affidavit, stating that he is a member in good standing in such subordinate body and occupies the position of secretary, or the office corresponding therewith, and that the resolution, a copy of which shall be set forth at length, was regularly passed at a regular meeting of said subordinate body and received the vote of two-thirds of the members present and voting, and that, to the best of his knowledge and belief, the statements made in the articles of association are true, and that such subordinate body is organized and acting under the laws of its respective association, giving the name by which such association is known. When the foregoing requirements are complied with such subordinate body shall be a body corporate by the name expressed in such articles, and by that name shall be a person in law, capable of suing and being sued in the courts, and taking and holding property of every kind the same as natural persons, and a copy of said articles of association, duly certified to by the recorder of deeds, shall be prima facie evidence in all courts and places of the existence and the due incorporation of such subordinate body.

SEC. 758. CONTRACT INVALID IF BENEFICIARY TO PAY ASSESSMENTS.—No contract with any such association shall be valid when there is a contract, agreement, or understanding between the member and the beneficiary prior to or at the time of becoming a member of the association that the beneficiary, or any person for him, shall pay such member's assessments and dues, or either of them.

Quaere: Whether beneficial order can waive provisions of this section. *Columbia Fraternal Assoc. v. Smith*, 54 App. D. C. 308 (1924); 52 W. L. R. 358. The provisions of the section are not waived, however, when order has no knowledge of agreement between insured and beneficiary whereby latter pays the assessment. *Ib.*

SEC. 759. BENEFITS EXEMPT FROM ATTACHMENT.—The money or other benefit, charity, relief, or aid to be paid, provided, or rendered

by any association authorized to do business under this subchapter shall not be liable to attachment, garnishment, or other process, and shall not be seized, taken, appropriated, or applied by any legal or equitable process, or by operation of law to pay any debt or liability of a certificate holder or of any beneficiary named in the certificate, or any person who may have any right thereunder.

SEC. 760. MEETINGS.—Any such association organized under the laws of said District may provide for the meetings of its legislative or governing body in any State, country, province, or Territory wherein such association shall have subordinate bodies, and all business transacted at such meetings shall be valid in all respects as if such meetings were held within said District; and where the laws of any such association provide for the election of its officers by votes to be cast in its subordinate bodies, the votes so cast in its subordinate bodies in any State, country, province or Territory shall be valid as if cast within said District.

SEC. 761. FRAUDULENT REPRESENTATIONS.—Any person, officer, member, or examining physician who shall knowingly or willfully make any false or fraudulent statement or representation in or with reference to any application for membership or for restoration to membership or for the purpose of obtaining any money or benefit in any association transacting business under this subchapter shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the United States jail in said District for not less than thirty days nor more than one year, or both, in the discretion of the court; and any person who shall willfully make a false statement of any material fact or thing in a sworn statement as to the death or disability of a certificate holder in any such association for the purpose of procuring payment of a benefit named in the certificate of such holder, and any person who shall willfully make any false statement in any verified report or declaration under oath required or authorized by this subchapter, shall be guilty of perjury.

Act of June 30, 1902 (32 Stat. L. p. 1, p. 534).

SEC. 762. NEGLECT TO REPORT.—Any such association refusing or neglecting to make the report as provided in this subchapter shall be excluded from doing business within said District. Said superintendent of insurance must, within sixty days after failure to make such report, or in case any such association shall exceed its powers, or shall conduct its business fraudulently, or shall fail to comply with any of the provisions of this subchapter, give notice in writing to the attorney for said District, who shall immediately commence an action against such association to enjoin the same from carrying on any business. An injunction against any such association may be granted on application by the Commissioners of said District at the request of the said superintendent. No association so enjoined shall have authority to continue business until such report shall be made, or overt act or violation complained of shall have been corrected, nor until the costs of such action be paid by it, (provided, the court shall find that such association was in default, as charged,) whereupon the superintendent of insurance shall reinstate such association, and not until then shall such association be allowed again.

to do business in said District. Any officer, agent, or person acting for any association or subordinate body thereof, within said District, while such association shall be so enjoined or prohibited from doing business pursuant to this subchapter, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in said jail not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court.

SEC. 763. ACTING WITHOUT AUTHORITY.—Any person who shall act within said District as an officer, agent, or otherwise, for any association which shall have failed, neglected, or refused to comply with, or shall have violated any of the provisions of this subchapter, or shall have failed or neglected to procure from the said superintendent a proper certificate of authority to transact business as provided for in this subchapter, shall be subject to the penalty provided in the last preceding section for the misdemeanor therein specified. To "transact business" or "doing business" under this subchapter means the writing of applications and the soliciting of new members so far as the penalty of this subchapter applies thereto. It shall not be unlawful for any organization under section seven hundred and forty-nine to continue the operation of its lodges or branches except in securing new members.

SEC. 764. THIS LAW NOT TO APPLY TO ASSOCIATIONS FOR PROFIT.—Nothing in this subchapter shall be construed to apply to any corporation, society, order, or association carrying on the business of life, health, casualty, or accident insurance for profit or gain, and it shall only apply to fraternal beneficial associations as defined by section seven hundred and forty-nine, and nothing in this subchapter contained shall be construed to affect any grand or subordinate lodge or branch of any such fraternal beneficial societies, orders, or associations which limits its certificate holders to a particular religious denomination or to the employees of a particular town or city, designated firm, business house, or corporation, or department or branch of the United States Government, nor the grand or subordinate lodges of the Independent Order of Odd Fellows, nor any grand or subordinate lodge, or other body of Free and Accepted Masons, nor the grand or any subordinate lodge of the Knights of Pythias, or similar orders, associations, or societies that do not have as their principal object the issuance of benefit certificates of membership in case of death or the payment of sick, funeral, or death benefits exceeding in amount one hundred dollars.

SEC. 765. NOR TO ASSOCIATIONS OR INDIVIDUALS USING NAME OF PREVIOUSLY EXISTING CORPORATION.—The provisions of this subchapter shall not extend to nor apply to any association or individual who shall, in the certificate filed with the recorder of deeds, use or specify a name or style the same as that of any previously existing incorporated fraternal beneficial association in the District of Columbia.

SUBCHAPTER THIRTEEN

EXISTING CORPORATIONS

SEC. 766. REORGANIZATION.—Any corporation heretofore existing or doing business in the District of Columbia may come under and

avail itself of the provisions of this chapter by giving to its stockholders, members, or associates notice as prescribed in section six hundred and thirty-five of subchapter four thereof and pursuing the same procedure and complying with the same requirements as are prescribed in said subchapter in respect to increase or diminution of capital stock; and upon filing its certificate of reorganization in such case, such company shall be entitled to the privileges and provisions and be subject to the liabilities of the class of corporations to which it belongs, as provided in and by this chapter.

SEC. 767. NOTICE OF APPLICATION FOR CHARTER, AND SO FORTH.—Whoever, not being a Senator or Representative in Congress, intends to present to Congress a bill for an act of incorporation, or for an alteration or extension of the charter of a corporation in the District of Columbia, or of any special privileges in said District, shall give notice of such intention by publishing a copy of the bill at least once a week for four successive weeks, in a newspaper published in the District of Columbia, the last of said publications to be made at least fourteen days prior to the presentation of such bill. Such newspaper shall be designated by the person proposing the bill and approved by the Commissioners of the District of Columbia.

SUBCHAPTER FOURTEEN

DISSOLUTION OF CORPORATIONS

SEC. 768. VOLUNTARY, WHEN.—When a majority of the trustees, directors, or other officers having the management of the concerns of any corporation in the District, or stockholders representing not less than one-third of the capital stock of any such corporation, discover that the property and effects of the corporation have been so far reduced, by losses or otherwise, that it will not be able to pay all just demands against it or offer a reasonable security to those who deal with it, or they shall deem it beneficial to the interests of the stockholders that the corporation be dissolved, or when such directors, trustees, or other officers are authorized by a majority of the stockholders to apply for a decree, as hereinafter provided, or when the objects of the corporation have wholly failed or are entirely abandoned or are impracticable, they may apply to the supreme court of the District by petition for the dissolution of said corporation.

As to method of proof of corporate existence, see *Fields v. U. S.*, 27 App. D. C. 433 (1906) ; 34 W. L. R. 382 ; dismissed in 205 U. S. 292.

"A corporation does not cease to exist through the discontinuance of its business, merely, though ceasing to maintain its active organization, or by becoming hopelessly insolvent" *Fields v. U. S.*, *supra*, citing with approval *Brown v. Delafield & B. Cement Co.*, 1 App. D. C. 232, 236.

SEC. 769. APPLICATION TO SUPREME COURT OF THE DISTRICT OF COLUMBIA.—Such application shall contain a statement of the reasons upon which it is founded, and there shall be annexed thereto—

First. A full, just, and true inventory of all the estate, real and personal, of the corporation, and of all the books, vouchers, and securities relating thereto.

Second. A full, just, and true account of the capital stock of the corporation, specifying the names of the stockholders, their resi-

dences, when known, the number of shares belonging to each, the amounts paid in upon said shares, respectively, and the amounts still due thereon.

Third. A statement of all the incumbrances on the property of the corporation and of all the engagements entered into by it which have not been fully satisfied or canceled, specifying the place of residence of each creditor and of every person to whom such engagements were made, if known, the sum owing to each creditor and the nature and consideration of the indebtedness, and such application shall be verified by affidavit.

SEC. 770. PUBLICATION.—On the filing of such application, accounts, inventories, and affidavit, an order shall be passed requiring all persons interested in said corporation to appear in said court and show cause by a day named, if any they have, why it should not be dissolved, and a notice of said order shall be published in some newspaper of general circulation weekly for three successive weeks, the first insertion to be not less than one month before the day fixed for showing cause as aforesaid.

SEC. 771. REFERENCE TO TAKE TESTIMONY.—Whether answer be made or not, the cause shall be referred to the auditor, who shall take testimony in relation to the allegations of the petition, and report to the court, with all convenient speed, with a statement of the property and effects, debts, credits, and engagements of the corporation and all other matters relative to the issues in said cause.

SEC. 772. DECREE OF DISSOLUTION.—If it appear to the court that the corporation is insolvent, or that a dissolution thereof would be beneficial to the stockholders and not injurious to the public interests, or that the objects of the corporation have wholly failed or been abandoned or are impracticable, a decree shall be entered dissolving the corporation and appointing one or more receivers of its estate and effects; and the corporation shall thereupon be dissolved and cease to exist.

SEC. 773. RECEIVER.—A director, trustee, or other officer of the corporation, or any of its stockholders, may be appointed a receiver, and any receiver so appointed shall give bond in such penalty, and with such surety or sureties, as may be approved by the court, conditioned for the due discharge of his duties as receiver.

SEC. 774. Upon his giving surety as aforesaid the receiver shall be vested with all the estate, real or personal, of the corporation, for the benefit of its creditors and stockholders.

SEC. 775. The said receiver shall proceed to collect and take into his possession all the assets and effects of the corporation, including any sums due and unpaid upon the subscriptions to the capital stock of the corporation, and shall have authority to institute all needful actions for that object. He shall give public notice of his appointment and require all creditors of the corporation to present their claims to him.

See sections 431-434, 439.

Metropolitan Coach Co. v. Freund, 42 App. D. C. 283 (1914); 42 W. L. R. 326.

SEC. 776. VOID ASSIGNMENTS.—All sales, assignments, transfers, mortgages, and conveyances of any part of the estate, real or personal, of said corporation, including choses in action of every description, made after the filing of the petition for dissolution, in

payment of or as security for any existing or prior debt, or for any other consideration, and all judgments confessed by said corporation after that time, shall be void as against the receiver appointed on said petition and as against the creditors of the corporation.

SEC. 777. CONTROVERSIES WITH DEBTORS AND CREDITORS.—The receiver may settle controversies that arise between him and the debtors or creditors of the corporation by arbitration. If there be any open and subsisting engagements or contracts of the corporation in the nature of insurance, or contingent engagements of any kind, the receiver may, with the consent of the party holding such engagements, cancel and discharge the same by refunding to such party the premium or consideration paid thereon to the corporation, or so much thereof as shall be in the same proportion to the time which remains of any risk assumed by such engagements as the whole premium bears to the whole term of such risk; and upon such amount being paid by the receiver to the person holding such engagement it shall be deemed canceled and discharged as against the receiver.

SEC. 778. DISTRIBUTION.—The receiver may retain out of the money in his hands the amounts necessary for the purpose of canceling and discharging any open and subsisting engagements and of satisfying any demands for which a suit may be pending against the corporation and the costs of the proceeding, and distribute the residue among the creditors of the corporation, giving preference to debts which are liens on the property of the corporation, and shall make dividends from time to time among the creditors until their debts are paid in full.

SEC. 779. DIVIDENDS TO STOCKHOLDERS.—No dividends shall be paid to stockholders until after the final dividend to the creditors, and if, after such final dividend is made, there remain any surplus in the receiver's hands, he shall distribute the same among the stockholders in proportion to the respective amounts paid in by them severally on their shares of stock.

SEC. 780. RECEIVER UNDER COURT'S DIRECTION.—The receiver shall be subject to the direction of the court as to making dividends and rendering his accounts and shall receive such commission as the court shall allow, not exceeding the rate allowed to executors and administrators, and reasonable counsel fees for services rendered to him.

SEC. 781. DISSOLUTION BY STOCKHOLDERS.—When a majority of the directors, trustees, or other officers of a corporation become satisfied that the objects of the corporation can not be accomplished, and no installment of the capital stock has been paid, and no investments have been made and no debts incurred which are unpaid, they may call a meeting of the stockholders, by a notice published in some newspaper of general circulation, and if a majority, in amount, of the stockholders present at such meeting, in person or by proxy, shall decide that the objects of the corporation can not be accomplished, the corporation shall thereupon be dissolved and cease.

SEC. 782. WHO TO BE TRUSTEES FOR CREDITORS AND STOCKHOLDERS.—Upon the dissolution of a corporation by the expiration of its charter, or otherwise, unless other persons be appointed by the stockholders, directors, or trustees of the corporation, or by a decree of the supreme court of the District, the directors or trustees acting last

before the dissolution, and their survivors, shall be the trustees for the creditors and stockholders of the dissolved corporation, and shall have full power to settle the affairs of the same, to collect its assets and pay its outstanding debts, and divide among its stockholders the money or other property remaining, in proportion to the stock of each stockholder paid up; and in case of the refusal of said trustees or directors, or a majority of them, to act, the said court may, upon the application of any person interested, appoint trustees in their place.

SEC. 783. ACTIONS NOT TO ABATE.—No action pending in favor of or against any corporation shall be discontinued or abate by the dissolution of the corporation, whether such dissolution occur by the expiration of its charter or otherwise, but all such actions may be prosecuted to final judgment in its corporate name; and on all judgments so obtained, whether before or after its dissolution, execution may be had and satisfaction enforced in such corporate name.

SEC. 784. A corporation may, after its dissolution, prosecute any action in and by its corporate name, for the use of the person or persons entitled to receive the proceeds of such action, upon any cause of action accrued, or which, but for such dissolution, would have accrued in favor of the corporation, in the same manner and with the like effect as if it had not been dissolved.

SEC. 785. SUITS AFTER DISSOLUTION.—Any such dissolved corporation may be sued by its corporate name for or upon any cause of action accrued or which, but for such dissolution, would have accrued against it in the same manner and with the like effect as if it were not dissolved; and process in such action may be served upon any one of the assignees, trustees, or receivers having the management of the assets of the corporation.

SEC. 786. INVOLUNTARY DISSOLUTION AT THE SUIT OF THE UNITED STATES.—Whenever the district attorney of the United States for the District of Columbia shall become satisfied that any corporation organized under the laws of said District has been guilty of such misuse, abuse, or nonuser of its corporate powers and franchises, or such violation of law as would authorize and make proper the forfeiture of its charter, corporate powers, and franchises, the said district attorney shall file in the supreme court of the District a petition in the name of the United States, setting forth, fully and in detail, the alleged abuse, misuse, or nonuser by reason whereof such forfeiture is sought, which petition shall be supported by affidavits of credible persons; and upon the filing of such petition the said court shall lay a rule requiring such defendant corporation to show cause, within such time as the court may deem proper, why a decree should not issue as prayed in said petition, a copy of which rule and petition shall be served on said corporation by a day therein limited.

“A charter of incorporation is not ipso facto abrogated or annulled by failure to pay a license tax, notwithstanding that the statute may provide that such failure shall work a forfeiture.” *Ohio Bank v. Central Construction Co.*, 17 App. D. C. 524 (1901); 29 W. L. R. 107.

SEC. 787. ANSWER OF CORPORATION.—The said corporation, by the day named in said order, unless further time be granted by the court, shall file an answer to said petition, fully setting forth all the defenses

upon which it intends to rely in resisting the application, which shall be verified by affidavit of some officer of the corporation.

SEC. 788. PLEADING.—The petitioners may thereupon plead to or traverse all or any of the material averments set forth in the answer, and the defendant shall join issue with or demur to said plea or traverse within five days thereafter.

SEC. 789. TRIAL.—If issue or issues be joined on such proceedings, the same shall stand for trial at such time as the court shall direct and shall be tried by a jury if either party desire it; otherwise, they shall be heard and determined by the court. If, from the findings of the jury or upon consideration and determination of the case by the court, the court shall be of opinion that legal cause of forfeiture has been shown and the public interests require that said forfeiture shall be declared, a decree of forfeiture shall be entered and the charter of said corporation shall thereby be annulled and vacated and its corporate franchises and powers shall cease and be void; and the court shall thereupon appoint a receiver or receivers of the assets and estate of said corporation, who shall proceed to wind up the affairs of said corporation, for the benefit of its creditors and stockholders, under the direction of the court.

SEC. 790. If any corporation upon which a petition and rule to show cause shall have been served as aforesaid, shall neglect to file an answer thereto at the time appointed by the court, the court shall proceed to hear the application *ex parte* within five days thereafter, and if it shall be of opinion that good cause of forfeiture is shown it shall proceed to decree as provided in the preceding section.

SEC. 791. JUDGMENT.—If the court, either upon a hearing *ex parte* or after answer, shall be of opinion that no cause of forfeiture is shown or that the public interests do not demand that such forfeiture be decreed, though legal cause therefor has been shown, it shall dismiss the petition. And if the court shall determine that legal cause of forfeiture has been shown, it may, in its discretion, before passing a final decree of forfeiture, pass orders requiring the said corporation, within a time to be therein fixed, to remedy the grievance complained of, and may suspend the passage of the final decree of forfeiture until the time so fixed, and may afterwards refuse to pass such decree if the grievance shall have been remedied by the time so fixed.

【SEC. 792. APPEAL.—From any judgment or determination of the court on petitions filed for forfeiture, as aforesaid, either party may appeal to the court of appeals, subject to such regulations as may be prescribed by said court.】

Act of June 30, 1902 (32 Stat. L., p. 534), repealing 31 Stat. L., p. 1189.

SEC. 793. INJUNCTION.—The district attorney may file a bill in the name of the United States in said supreme court for the purpose of restraining by injunction any corporation organized under the laws of the District from assuming or exercising any franchise, liberty, or privilege or transacting any business not allowed by its charter or certificate of incorporation or not by law allowed to be assumed or exercised by said corporation, *and said district attorney may file a bill to enjoin any foreign corporation from transacting in the District of Columbia any business not allowed by its charter or certificate of incorporation, or from transacting any business in said District when it has not complied with any provision of this code relating to foreign corporations; and in the same manner may file a*

bill to restrain any individuals from exercising any corporate rights, privileges, or franchises not granted to them by law; and on the filing of any such bill the said supreme court shall have power to issue an injunction as prayed and to exercise all the powers of a court of equity over the subject-matter of such bill.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 534).

SEC. 794. INVOLUNTARY DISSOLUTION AT THE SUIT OF CREDITORS.—When any corporation in the District has remained insolvent for a year, or has neglected or refused for that period to pay and discharge its notes or other evidences of debt, or has, for that period, suspended its ordinary and lawful business, a bill may be filed by the district attorney, as aforesaid, for the dissolution of said corporation, or, if he shall decline to do so, on the application of any judgment creditor of said corporation, the said judgment creditor, if an execution upon his judgment shall be returned unsatisfied, in whole or in part, may file such bill.

SEC. 795. Upon prima facie proof of the facts necessary to sustain such suit the court may issue an injunction restraining the corporation, its trustees, directors, and officers from collecting or receiving any debt or demand and from paying out or transferring or delivering to any person any of its property or effects and from exercising any of its corporate rights and franchises during the pendency of the suit, unless by permission of the court. And at any stage of the proceeding the court may appoint a receiver to collect and preserve the property of the corporation and dispose of and manage the same, under the direction of the court, until final decree in the cause.

SEC. 796. PARTIES.—Where the action is brought by a creditor, the stockholders, directors, trustees, or other officers, or any of them who may be made liable by law for the payment of the complainant's debt, may be made parties defendant by the original or a supplemental bill, and their liability may be declared and enforced by the decree; but nothing herein shall prevent any creditor from enforcing such liability in a separate suit against such parties.

SEC. 797. ACCOUNT AND DISTRIBUTION.—In such suit, if the court shall be of opinion that the complainant is entitled to the relief prayed, and that such corporation ought to be dissolved, the court shall cause an account to be taken of the assets and debts of the corporation and shall decree an equal distribution of the assets among the creditors, subject to existing liens; but if said corporation has no property to satisfy its creditors, or to the extent to which its property is insufficient therefor, the court may require the stockholders, who are parties defendant to the suit, to pay into court the amounts due and unpaid on the shares of stock held by them, and shall ascertain the amounts properly chargeable, in favor of creditors, to said stockholders and the trustees, directors, or other officers who are parties to the suit, and in the final decree for the dissolution shall adjudge and decree that said amounts shall be paid into court by the parties respectively liable therefor, to be applied to the payment of the debts of the corporation.

CHAPTER NINETEEN

CRIMES AND PUNISHMENTS

SUBCHAPTER ONE

OFFENSES AGAINST THE PERSON

SEC. 798. MURDER IN FIRST DEGREE.—Whoever, being of sound memory and discretion, purposely, and either of deliberate and premeditated malice or by means of poison, or in perpetrating or in attempting to perpetrate any offense punishable by imprisonment in the penitentiary, kills another, is guilty of murder in the first degree.

Proof of *corpus delicti*, see *Murray v. U. S.*, 53 App. D. C. 119 (1923); 51 W. L. R. 358.

"It is in the discretion of the court to permit the jury to separate in a homicide case, and his action in that respect will not be reviewed unless it appear affirmatively that prejudice resulted to the defendant." *McHenry v. U. S.*, 51 App. D. C. 119 (1921); 49 W. L. R. 771. Motive may be proved, because it "may be very important in determining whether or not the accused was actuated by deliberate, premeditated malice." *Ib.* See also *Lomax v. U. S.*, 37 App. D. C. 414 (1911), 39 W. L. R. 698, following *McUin v. U. S.*, 17 App. D. C. 323. Government is not required to prove motive, but jury may consider absence of such proof as a circumstance in defendant's favor. *Lanckton v. U. S.*, 18 App. D. C. 348 (1901); 29 W. L. R. 494.

For charge as to self-defense, see *Price v. U. S.*, 51 App. D. C. 106 (1921); 49 W. L. R. 786. As to self-defense, see also *Budd v. U. S.*, 48 App. D. C. 332 (1919); 47 W. L. R. 83. *Jackson v. U. S.*, 48 App. D. C. 272 (1919); 47 W. L. R. 38. *Marshall v. U. S.*, 45 App. D. C. 373 (1916); 44 W. L. R. 722. *Sacrini v. U. S.*, 38 App. D. C. 371 (1912); 40 W. L. R. 213. *Grant v. U. S.*, 28 App. D. C. 169 (1906); 34 W. L. R. 654. *Wallace v. U. S.*, 18 App. D. C. 152 (1901); 29 W. L. R. 560. *Fearson v. U. S.*, 10 App. D. C. 536 (1897); 25 W. L. R. 526. *Travers v. U. S.*, 6 App. D. C. 450 (1895); 23 W. L. R. 469 (as to reputation of deceased for peace and good order). *Hopkins v. U. S.*, 4 App. D. C. 430 (1894); 22 W. L. R. 838.

To reduce homicide from murder to manslaughter, defendant must not only show that he acted under the influence of passion but "in addition that there was a sufficient cause of provocation for his passion." *Jackson v. U. S.*, 48 App. D. C. 272 (1919); 47 W. L. R. 38. What is reasonable adequate provocation is generally for the jury. *Ib.* On provocation, see also *Grant v. U. S.*, 28 App. D. C. 169, *supra*.

In homicidal cases, where the defense is self-defense, the majority of the courts hold "that it is proper to give incidents or specific acts of violence within the knowledge of the witness or coming under his observation." *Marshall v. U. S.*, 45 App. D. C. 373, *supra*. From this view *Shepherd, C. J.*, dissents, holding testimony should be confined to reputation of deceased for cruelty and violence. *Ib.* On threats by accused, see also *Lomax v. U. S.*, 37 App. D. C. 414 (1911); 39 W. L. R. 698.

In a homicidal case "it is the duty of an appellate court to correct any error prejudicial to the defendant, even though not properly raised in the trial court." *Patten v. U. S.*, 42 App. D. C. 239 (1914); 42 W. L. R. 338. Also *Burge v. U. S.*, 26 App. D. C. 1 (1906); 34 W. L. R. 210.

As to liability for crime committed pursuant to conspiracy, see *Patten v. U. S.*, *supra*.

A heavy paling, with sharp, protruding nails, is a deadly weapon, from the use of which malice must be presumed. *Patten v. U. S.*, 42 App. D. C. 239, *supra*, citing *Hopkins v. U. S.*, 4 App. D. C. 430; 22 W. L. R. 838 (use of brickbat).

"A deliberate intent to take life is declared to be an essential element of murder in the first degree, and this, of course, must be shown as a fact." *Sabens v. U. S.*, 40 App. D. C. 440 (1913); 41 W. L. R. 384. "Implied malice constitutes murder in the second degree." *Ib.* One so drunk as to be incapable of deliberating and premeditating the crime can not be convicted of murder in the first degree. *Ib.* Although defendant forms a deliberate and premeditated intent to kill while sober, and then voluntarily becomes drunk, he can not be convicted of murder in the first degree, if at the time of the commission of the offense he was too drunk to deliberate and premeditate. *Ib.* As to drunkenness as a defense see also *Lanckton v. U. S.*, 18 App. D. C. 348; 29 W. L. R. 494; *Snell v. U. S.*, 16 App. D. C. 501 (1900); 28 W. L. R. 518; *Smith v. U. S.*, 50 App. D. C. 208 (1921).

As to what constitutes arraignment, see *Johnson v. U. S.*, 38 App. D. C. 347 (1912); 40 W. L. R. 178 (affirmed in 225 U. S. 405). Quære: Whether defendant can waive reading of indictment in capital cases. *Ib.* In first-degree cases jury can not qualify its verdict by adding "without the death penalty." *Ib.* (See Code section 1.) As to relation of Penal Code to the District of Columbia Code, see *Johnson v. U. S.*, *supra*.

Homicide committed while attempting robbery is first-degree murder. *U. S. v. Evans*, 28 App. D. C. 264 (1906); 34 W. L. R. 739. "The words 'punishable by imprisonment in the penitentiary' do not mean an offense that can only be punished by such imprisonment, but include such as may be so punished." *Ib.* Quære: Whether it is necessary to charge in an indictment for first-degree murder that the killing was "purposely" done. *Evans v. U. S.*, 28 App. D. C. 269.

When one criminal act may be introduced as evidence of another, see *Burge v. U. S.*, 26 App. D. C. 524 (1906); 34 W. L. R. 210.

"The definition of murder in section 798 of the code is the common-law definition of the crime." *Hamilton v. U. S.*, 26 App. D. C. 382 (1905); 34 W. L. R. 558. Indictment for murder is not defective for want of an express allegation of an intent to kill. *Ib.*, citing *Hill v. U. S.*, 22 App. D. C. 402; 31 W. L. R. 552. As to sufficiency of indictment for death by strangling, see *Ib.*

"The proof of the means of commission of a homicide need not conform strictly to the averment of such means in the indictment. If the means of death proved agree in substance with that charged, it is sufficient." *Hamilton v. U. S.*, *supra*.

It is not necessary to charge in the indictment that accused was of sound mind and discretion. *Hill v. U. S.*, 22 App. D. C. 395 (1903); 31 W. L. R. 552.

Sufficiency of evidence where deceased met death by jumping into canal to escape murderous assault, see *Norman v. U. S.*, 20 App. D. C. 494 (1902); 30 W. L. R. 810.

Statute of 1 Hen. V, ch. 5 (1413), requiring indictment to set forth "estate, or degree, or mystery of defendant and the town or county, etc., of which he was conversant," etc., is not in force in this District. *Lanckton v. U. S.*, 18 App. D. C. 348 (1901); 29 W. L. R. 494. An indictment charging the commission of murder in a house situated in the District is not defective because it does not particularly describe the location of the house. *Ib.*

Where defendant is guilty of murder or nothing it is not error to refuse to charge as to manslaughter. *Horton v. U. S.*, 15 App. D. C. 310 (1899); 27 W. L. R. 706. Insanity as a defense, *ib.*; also *Snell v. U. S.*, 16 App. D. C. 501; 28 W. L. R. 518. *Taylor v. U. S.*, 7 App. D. C. 27 (1895); 23 W. L. R. 433 (as to emotional insanity).

"Accidental homicide and homicide in self-defense are wholly irreconcilable." *Fearson v. U. S.*, 10 App. D. C. 536 (1897); 25 W. L. R. 526.

For definition of malice aforethought, see *Travers v. U. S.*, 6 App. D. C. 450 (1895); 23 W. L. R. 469. Mental dullness or weakness as a defense. *Ib.*

"A conviction for an assault and battery is no bar to a subsequent indictment for manslaughter, or murder, in case the person assaulted dies within a year and a day." *Hopkins v. U. S.*, 4 App. D. C. 430 (1894); 22 W. L. R. 838. Failure of deceased to secure proper medical attention after assault no defense to charge of homicide. *Ib.*

SEC. 799. Whoever maliciously places an obstruction upon a railroad or street railroad, or displaces or injures anything appertaining thereto, or does any other act with intent to endanger the passage of

any locomotive or car, and thereby occasions the death of another, is guilty of murder in the first degree.

SEC. 800. MURDER IN SECOND DEGREE.—Whoever with malice aforethought, except as provided in the last two sections, kills another is guilty of murder in the second degree.

See cases cited under section 798.

SEC. 801. PUNISHMENT.—The punishment of murder in the first degree shall be death by hanging. The punishment of murder in the second degree shall be imprisonment for life, or for not less than twenty years.

Johnson v. U. S., 38 App. D. C. 347; 40 W. L. R. 178; affirmed in 225 U. S. 405. (See sec. 798.)

SEC. 802. MANSLAUGHTER.—Whoever commits manslaughter shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding fifteen years, or by both such fine and imprisonment.

See cases cited under section 798. See also *Sinclair v. U. S.*, 49 App. D. C. 351 (1920), for prosecution resulting from reckless driving of automobile.

U. S. v. Geare, 54 App. D. C. 30 (1923) (Knickerbocker Theater disaster.)

SEC. 803. ASSAULT WITH INTENT TO KILL, AND SO FORTH.—Every person convicted of any assault with intent to kill or to commit rape, or to commit robbery, or mingling poison with food, drink, or medicine with intent to kill, or willfully poisoning any well, spring, or cistern of water, shall be sentenced to imprisonment for not more than fifteen years.

Assault on a female under the age of 16 years, with intent to carnally know her, is punishable under section 803 as an assault with intent to rape. *Sanselo v. U. S.*, 44 App. D. C. 508 (1916); 44 W. L. R. 210.

In an indictment for assault with intent to kill "it is not required that in the indictment it should be alleged and set forth with what means or instrument the killing was attempted to be perpetrated." *Davis v. U. S.*, 16 App. D. C. 442 (1900); 28 W. L. R. 471, cited with approval in *Coratola v. U. S.*, 24 App. D. C. 229 (1904); 32 W. L. R. 711. Otherwise, if attempt was by poisoning, drowning, etc. *Ib.*

SEC. 804. MAYHEM.—Every person convicted of an assault with intent to commit mayhem, or of an assault with a dangerous weapon, shall be sentenced to imprisonment for not more than ten years.

Act of Maryland of 1793, ch. 58, sec. 12; Comp. Stat. D. C., p. 162, sec. 33.

SEC. 805. ASSAULT.—Whoever assaults another with intent to commit any other offense which may be punished by imprisonment in the penitentiary shall be imprisoned not more than five years.

Sanselo v. U. S., cited under section 803.

"It is not necessary to the charge of a joint assault by several persons that they be specifically charged as acting 'together and with each other.'" *Polen v. U. S.*, 41 App. D. C. 4 (1913); 41 W. L. R. 817.

SEC. 806. Whoever unlawfully assaults, or threatens another in a menacing manner, shall be fined not more than five hundred dollars, or be imprisoned not more than twelve months, or both.

See act of July 16, 1912 (37 Stat. L., pt. 1, p. 192), *infra* p. 498.

SEC. 807. Every person convicted of mayhem or of maliciously disfiguring another shall be imprisoned for not more than ten years.

SEC. 808. RAPE.—Whoever has carnal knowledge of a female forcibly and against her will, or carnally knows and abuses a female

child under sixteen years of age, shall be imprisoned for not more than thirty years: *Provided*, That in any case of rape the jury may add to their verdict, if it be guilty, the words "with the death penalty," in which case the punishment shall be death by hanging: *Provided further*, That if the jury fail to agree as to the punishment the verdict of guilty shall be received and the punishment shall be imprisonment as provided in this section.

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 567), repealing 31 Stat. L., p. 1189.

On charge of carnal knowledge evidence of subsequent marriage of parties is admissible. *Weaver v. U. S.*, 52 W. L. R. (Ct. App.) 546 (1924).

Prosecuting witness in cases of rape may testify as to whether or not she made complaint, when and to whom, although the details of the disclosure are not admissible except on cross-examination or to confirm her testimony after it is impeached, or unless a part of the *res gestae*. *Harris v. U. S.*, 50 App. D. C. 139 (1920); 49 W. L. R. 22, citing, with approval, *Snowden v. U. S.*, 2 App. D. C. 89; 22 W. L. R. 74. See also *Roney v. U. S.*, 43 App. D. C. 533 (1915); 43 W. L. R. 324. *Lyles v. U. S.*, 20 App. D. C. 559 (1902); 31 W. L. R. 67;

Carnal knowledge of child under age specified is rape. *Sanselo v. U. S.*, 44 App. D. C. 508 (1916); 44 W. L. R. 210. When a child under the age of consent has been defiled the law conclusively presumes force on the part of her seducer, and the question of consent is immaterial. *Yeager v. U. S.*, 16 App. D. C. 356 (1900); 28 W. L. R. 554.

Where prosecuting witness is under age of consent her reputation for unchastity is inadmissible. *Sacks v. U. S.*, 41 App. D. C. 34 (1913); 41 W. L. R. 787. Her reputation for truth and veracity may be attacked, as in the case of any other witness. *Ib.* See also *Kidwell v. U. S.*, 33 App. D. C. 566 (1912); 40 W. L. R. 277. *Monalokos v. U. S.*, 41 App. D. C. 19 (1913); 41 W. L. R. 769.

"In all cases (of rape) the court must have the verdict of the jury upon which to base its judgment," and there is, therefore, no error in refusing to accept a plea of guilty. *Green v. U. S.*, 40 App. D. C. 426 (1913); 41 W. L. R. 432.

As to admissibility of evidence as a part of the *res gestae* in rape cases, see *Snowden v. U. S.*, 2 App. D. C. 89 (1893); 22 W. L. R. 74.

SEC. 809. PROCURING MISCARRIAGE.—Whoever, with intent to procure the miscarriage of any woman, prescribes or administers to her any medicine, drug, or substance whatever, or with like intent uses any instrument or means, unless when necessary to preserve her life or health and under the direction of a competent licensed practitioner of medicine, shall be imprisoned for not more than five years; or if the woman or her child dies in consequence of such act, by imprisonment for not less than three nor more than twenty years.

See section 211, United States Criminal Code (35 Stat. L. 1129), making it an offense to send through the mails information as to the procuring of an abortion (construed in *Kemp v. U. S.*, 41 App. D. C. 539 (1914); 42 W. L. R. 166; certiorari denied, 234 U. S. 756).

"This section applies to the person or persons committing the act which produces the miscarriage, and not to the person upon whom it is committed, notwithstanding it may be done with her knowledge and consent. Not being liable to indictment thereunder, she is not an accomplice in the legal sense." *Thompson v. U. S.*, 30 App. D. C. 352 (1908); 36 W. L. R. 98. *Maxey v. U. S.*, 30 App. D. C. 63 (1907); 35 W. L. R. 446.

SEC. 810. ROBBERY.—Whoever by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, shall take from the person or immediate actual possession of another anything of value, is guilty of robbery, and any person convicted thereof shall suffer imprisonment for not less than six months nor more than fifteen years.

Robbery is an infamous crime, and must be prosecuted by indictment. *U. S. v. Evans*, 28 App. D. C. 264 (1906); 34 W. L. R. 739.

SEC. 811. Whoever attempts to commit robbery, as defined in the preceding section, by an overt act, shall be imprisoned for not more than three years or be fined not more than five hundred dollars, or both.

SEC. 812. ABDUCTION.—Whoever unlawfully and forcibly or fraudulently carries off or decoys out of the District any person, or arrests or imprisons any person with the intention of having such person carried out of the District, shall be imprisoned for not less than one nor more than seven years, or fined not exceeding one thousand dollars, or both: *Provided*, That whoever leads, carries, or entices away a child under the age of sixteen years, with the intent unlawfully to detain or conceal such child so lead, taken, or enticed away, shall be imprisoned for not more than twenty years or fined not exceeding one thousand dollars, or both.

"In no case, in the absence of an express provision of statute, can a parent be guilty of kidnaping his or her own minor child, unless the forcible taking is from the custody established by the decree of a competent court." *Hard v. Splain*, 45 App. D. C. 1 (1916) ; 44 W. L. R. 278.

SEC. 813. Any person who, for purposes of prostitution, persuades, entices, or forcibly abducts from her home or usual abode, or from the custody and control of her parents or guardians, any female under sixteen years of age shall be punished by imprisonment for not less than two nor more than twenty years; and whoever knowingly secretes or harbors any such female so persuaded, enticed, or abducted as aforesaid shall suffer imprisonment for not more than eight years.

SEC. 814. CRUELTY TO CHILDREN.—Any person who shall torture, cruelly beat, abuse, or otherwise willfully maltreat any child under the age of eighteen years; or any person, having the custody and possession of a child under the age of fourteen years, who shall expose, or aid and abet in exposing, such child in any highway, street, field, house, outhouse, or other place, with intent to abandon it; or any person, having in his custody or control a child under the age of fourteen years, who shall in any way dispose of it with a view to its being employed as an acrobat, or a gymnast, or a contortionist, or a circus rider, or a ropewalker, or in any exhibition of like dangerous character, or as a beggar, or mendicant, or pauper, or street singer, or street musician; or any person who shall take, receive, hire, employ, use, exhibit, or have in custody any child of the age last named for any of the purposes last enumerated, shall be deemed guilty of a misdemeanor, and, when convicted thereof, shall be subject to punishment by a fine of not more than two hundred and fifty dollars, or by imprisonment for a term not exceeding two years, or both.

SEC. 815. LIBEL.—Whoever publishes a libel shall be punished by a fine not exceeding one thousand dollars or imprisonment for a term not exceeding five years, or both.

See section 853.

A scurrilous letter, addressed to the District Commissioners, charging certain of their subordinate officers with malfeasance in office, and copies of which were sent to such officials, is not privileged, especially when no foundation for the charge appears. *Raymond v. U. S.*, 25 App. D. C. 555 (1905) ; 33 W. L. R. 514, certiorari denied in 200 U. S. 619. One convicted under this section, and sentenced to five years imprisonment at hard labor is not thereby subjected to "cruel or unusual punishment." *Ib.*

SEC. 816. WHAT IS PUBLICATION.—To knowingly send or deliver any libelous communication to the party libeled is a sufficient publication to subject the person sending or delivering the same to punishment as aforesaid.

SEC. 817. JUSTIFICATION.—Any publication of a libel shall be justified if it appear that the matter charged as libelous was true and was published with good motives and for justifiable ends.

R. S. D. C. sec. 842; Comp. Stat. D. C. p. 475, sec. 158.

SEC. 818. FALSE CHARGES OF UNCHASTITY.—Whoever wrongfully accuses any woman of unchastity shall be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year, or both, and shall also be liable to a civil action for damages by the party injured.

One who "wrongfully accuses a woman of unchastity commits a crime against the United States. And * * * an indictment for a conspiracy to commit" * * * such an offense "charges an offense under said section 37 of the Federal Penal Code. *Fletcher v. U. S.*, 42 App. D. C. 53 (1914); 42 W. L. R. 178 (conspiracy to falsely accuse a woman of adultery in a divorce proceeding).

Statement by physician to unmarried woman in the presence of a third party (who is there at the latter's request) that she is pregnant is privileged, in the absence of malice. *Brice v. Curtis*, 38 App. D. C. 304 (1912); 40 W. L. R. 103.

SEC. 819. BLACKMAIL.—Whoever verbally or in writing accuses or threatens to accuse any other person of a crime or of any conduct which, if true, would tend to disgrace such other person, or in any way subject him to the ridicule or contempt of society, or threatens to expose or publish any of his infirmities or failings, with intent to extort from such other person anything of value or any pecuniary advantage whatever, or to compel the person accused or threatened to do or to refrain from doing any act, and whoever with such intent publishes any such accusation against any other person shall be imprisoned for not more than five years or be fined not more than one thousand dollars, or both.

Means used by creditor to collect debt held blackmail. *Slater v. Taylor*, 31 App. D. C. 100 (1908); 36 W. L. R. 502.

SUBCHAPTER TWO

OFFENSES AGAINST PROPERTY

SEC. 820. ARSON.—Whoever shall maliciously burn or attempt to burn any dwelling, or house, barn, or stable adjoining thereto, or any store, barn, or outhouse, or any shop, office, stable, store, warehouse, or any other building, or any steamboat, vessel, canal boat, or other water craft, or any railroad car, the property, in whole or in part, of another person, or any church, meetinghouse, schoolhouse, or any of the public buildings in the District, belonging to the United States or to the District of Columbia, shall suffer imprisonment for not less than one year nor more than ten years.

R. S. D. C. sec. 1151; Comp. Stat. D. C. p. 159, sec. 21.

One burning a dwelling house occupied in part by him and in part by another, with intent to defraud an insurance company, is guilty of arson. *Posey v. U. S.*, 26 App. D. C. 302 (1906); 34 W. L. R. 565. "It is not to be presumed

that Congress intended to exempt from liability a tenant who should maliciously burn, or attempt to burn, a building belonging to another, though temporarily occupied by him." *Ib.* As to joinder of offenses under this section and under section 821, see *ib.*

SEC. 821. Whoever maliciously burns or sets fire to any dwelling, shop, barn, stable, store, or warehouse or other building, or any steamboat, vessel, canal boat, or other water craft, or any goods, wares, or merchandise, the same being his own property, in whole or in part, with intent to defraud or injure any other person, shall be imprisoned for not more than fifteen years.

Posey v. U. S. (see sec. 820).

SEC. 822. Whoever shall maliciously burn or set fire to any fences, woods, stacks of hay, grain, or straw, or growing crops, the property, in whole or in part, of another, shall be imprisoned for not more than thirty days or be fined not more than five hundred dollars, or both.

SEC. 823. HOUSEBREAKING.—Whoever shall, either in the night or in the daytime, break and enter, or enter without breaking, any dwelling, bank, store, warehouse, shop, stable, or other building, or any apartment or room, whether at the time occupied or not, or any steamboat, canal boat, vessel, or other water craft, or railroad car, or any yard where any lumber, coal, or other goods or chattels are deposited and kept for the purpose of trade, with intent to break and carry away any part thereof or any fixture or other thing attached to or connected with the same, or to commit any criminal offense, shall be imprisoned for not more than fifteen years.

As to sufficiency of proof of intent to commit larceny at time of breaking and entry, see *Cady v. U. S.*, 54 App. D. C. 10; 51 W. L. R. 763 (1923). There is no variance where the indictment alleges that building entered was occupied by A and the proof shows occupancy by B, with the consent of A. *Ib.*

Counts of housebreaking and of larceny committed after the entry may be joined, and the court does not err in refusing to require the Government to elect between them. *Lee v. U. S.*, 37 App. D. C. 442 (1911); 39 W. L. R. 750. Unlawful entry with intent to commit an offense constitutes the crime, hence, the actual commission of the other offense is not necessary. *Ib.*

SEC. 824. UNLAWFUL ENTRY ON PRIVATE PROPERTY.—Any person who, without lawful authority, shall enter, or attempt to enter, a private dwelling against the will of the lawful occupant thereof, or being therein without lawful authority to remain therein, shall refuse to quit the same on the demand of the lawful occupant thereof, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding fifty dollars or imprisonment in the jail for not more than six months, or both, in the discretion of the court.

See section 851.

SEC. 825. DEPREDAATION ON FIXTURES IN HOUSES.—Whoever shall willfully and without color of right enter into any occupied or unoccupied dwelling house or other building, property of another, and shall cut, break, or tear from its place any gas pipe, water pipe, doorbell, or other fixture therein; or whoever shall in such dwelling house or other building willfully and without color of right cut, break, or tear down any wall or part of a wall, or door, with intent to cut, break, or tear from its place any pipe or fixture therein, shall be fined not more than two hundred dollars, or be imprisoned not more than two years, or both.

SEC. 825a. PLACING EXPLOSIVES NEAR BUILDINGS, AND SO FORTH.—Whoever places, or causes to be placed, in, upon, under, against, or near to any building, car, vessel, monument, statue, or structure, gunpowder or any explosive substance of any kind whatsoever, with intent to destroy, throw down, or injure the whole or any part thereof, although no damage is done, shall be punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding ten years.

Interpolated by act of March 3, 1905 (33 Stat. L. pt. 1, p. 1033).

SEC. 826. GRAND LARCENY.—Whoever shall feloniously take and carry away anything of value of the amount or value of thirty-five dollars or upward, including things savoring of the realty, shall suffer imprisonment for not less than one nor more than ten years.

See sections 834, 851a, 851b (22 Stat. L. 530, construed in *Williams v. U. S.*, 3 App. D. C. 335; 22 W. L. R. 457).

See 18 Stat. L. p. 479 (larceny from the United States), cited in *Jackson v. U. S.*, 34 App. D. C. 1 (1909); 37 W. L. R. 741.

"The unexplained exclusive possession of stolen property, shortly after the commission of a larceny, may satisfy the jury and warrant a verdict of guilty" of larceny. *Tractenberg v. U. S.*, 53 App. D. C. 396; 51 W. L. R. 774 (1923).

Where indictment alleges ownership in A. B. R., and the proof shows A. P. R., the variance is not prejudicial. *Jones v. U. S.*, 53 App. D. C. 138 (1923); 51 W. L. R. 459. See also *Williams v. U. S.*, 3 App. D. C. 335 (1894); 22 W. L. R. 457.

A bookkeeper and clerk in a hotel, to whom a guest delivers property for safe-keeping, and who subsequently abstracts them from the hotel safe, is guilty of larceny and not embezzlement. *Chanock v. U. S.*, 50 App. D. C. 54 (1920); 48 W. L. R. 367.

Driver of transfer truck who converts property while hauling it from a freight depot is guilty of larceny and not embezzlement. *Weisberg v. U. S.*, 49 App. D. C. 28 (1919); 47 W. L. R. 359, citing with approval *Talbert v. U. S.*, 42 App. D. C. 1; 42 W. L. R. 330.

For distinction between larceny and embezzlement, see *Talbert v. U. S.*, supra. Where possession of jewelry is secured by a salesman for the purpose of exhibiting the same to a prospective purchaser, and he subsequently converts it to his own use, the offense is larceny, and it is immaterial when the intent to convert was formed. *Ib.* Where possession is secured by fraud, trick, or artifice the criminal intent must exist at the time the article is received. *Ib.* See also *Woodward v. U. S.*, 38 App. D. C. 323 (1912); 40 W. L. R. 306; *Miller v. U. S.*, 41 App. D. C. 52 (1913); 41 W. L. R. 718; certiorari denied in 231 U. S. 755.

See *Lee v. U. S.*, cited under section 823.

As to proof of incorporation of owner of goods stolen, see *Brown v. U. S.*, 35 App. D. C. 548 (1910); 38 W. L. R. 732. Indictment for larceny will not lie against one who steals property in another State and brings it into the District. *Ib.*, citing *Davis v. U. S.*, 18 App. D. C. 468, 494 (1901); 29 W. L. R. 574. (See, however, section 836a.)

Distinction between larceny and embezzlement, *Rohde v. U. S.*, 34 App. D. C. 249 (1910); 38 W. L. R. 26. Treasurer of unincorporated association who converts funds coming into his possession as such treasurer is guilty of embezzlement and not larceny. *Ib.*

Unlawful taking is not sufficient; it must be coupled with the intent to steal. *Ryan v. U. S.*, 26 App. D. C. 74 (1905); 33 W. L. R. 516. Drunkenness no defense unless "so drunk as to be incapable of forming the intent to steal; that is to say, incapable of consciousness that he is committing a crime, incapable of discriminating between right and wrong." *Ib.* One who steals while so intoxicated may nevertheless be convicted if he converts the property after complete return to consciousness. *Ib.* The fact that such conversion took place beyond the District of Columbia does not prevent a prosecution here, when the original taking was in the District. *Ib.*

It is sufficient in the indictment to describe the property by the generic name of the class to which it belongs. *Nordlinger v. U. S.*, 24 App. D. C. 406 (1904); 32 W. L. R. 810. Former jeopardy as a defense. *Ib.*

SEC. 826a. OFFENSES AGAINST PROPERTY.—Whoever shall knowingly connect or disconnect any electrical conductor belonging to any company using or engaged in the manufacture and supply of electric current for purposes of light, heat, and power, or either of them, or makes any connection with any such electrical conductor for the purpose of using or wasting the electric current, or who in any wise tampers with any meter used to register current consumed, or who interferes with the operating of any dynamo or other electrical appliance of such company, or tampers with or interferes with the poles, wires, conduits, or other apparatus used by such companies, unless such person or persons shall be duly authorized by or be in the employ of such company, shall be punished by a fine not exceeding one thousand dollars or imprisonment not exceeding one year, or both.

Interpolated by act of June 30, 1902 (32 Stat. L. pt. 1, p. 534).

SEC. 826b. UNAUTHORIZED USE OF VEHICLES.—Any person who, without the consent of the owner, shall take, use, operate, or remove, or cause to be taken, used, operated, or removed from a garage, stable, or other building, or from any place or locality on a public or private highway, park, parkway, street, lot, field, inclosure, or space, an automobile or motor vehicle, and operate or drive or cause the same to be operated or driven, for his own profit, use, or purpose, shall be punished by a fine not exceeding one thousand dollars or imprisonment not exceeding five years, or both such fine and imprisonment.

Interpolated by act of February 3, 1913 (37 Stat. L. pt. 1, p. 656).

SEC. 827. PETIT LARCENY.—Whoever shall feloniously take and carry away any property of value of thirty-five dollars or less, including things savoring of the realty, shall be fined not more than two hundred dollars or be imprisoned for not more than one year, or both. And in all convictions for larceny, either grand or petit, the trial justice may, in his sound discretion, order restitution to be made of the value of the money or property shown to have been stolen by the defendant and made way with or otherwise disposed of and not recovered.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 535) repealing 31 Stat. L. pt. 1, p. 1189.

See annotations to section 826.

SEC. 828. DESTROYING STOLEN PROPERTY.—Whoever shall maliciously destroy anything of value of the amount or value of thirty-five dollars or upward which shall have been stolen, knowing the same to have been stolen, shall suffer imprisonment for not less than one year nor more than three years.

SEC. 829. RECEIVING STOLEN GOODS.—Any person who shall receive or buy anything of value which shall have been stolen or obtained by robbery, knowing the same to be so stolen or so obtained by robbery, with intent to defraud the owner thereof, if the thing or things received or bought shall be of the value of thirty-five dollars or upward, shall suffer imprisonment for not less than one year nor more than ten years; or if the value of the thing or things so received or bought be less than thirty-five dollars, shall suffer imprisonment for not more than two years.

Act of Maryland 1798, ch. 101, sec. 3.

Baer v. U. S., 54 App. D. C. 24; 51 W. L. R. 776 (1923).

"Under the prevailing modern rule the crime of receiving stolen goods is a substantive offense, separate and distinct from the larceny itself." Weisberg v. U. S., 49 App. D. C. 28 (1919); 47 W. L. R. 359. Hence one who advises, incites, or connives at the offense of larceny but is not present at the taking (although chargeable as a principal under section 908) may be convicted of receiving stolen property when he subsequently purchases it from the thief. *Ib.*

SEC. 830. STEALING, DESTROYING, MUTILATING, SECRETING, OR WITHHOLDING WILL.—Whoever, during the life of a testator or after his death, shall, for a fraudulent purpose, take and carry away a will, codicil, or other testamentary instrument, or destroy, mutilate, or secrete the same, whether it relates to personal or real property, shall suffer imprisonment for not more than five years.

If any person in whose possession or custody a will or codicil shall be after the death of a testator or testatrix shall willfully neglect to deliver the same to the supreme court of the District of Columbia, holding a special term as a probate court, or to the register of wills, or to some executor named in the will, for the space of three calendar months after the death of testator or testatrix shall be known to him, the person thus offending shall be punished by a fine not exceeding five hundred dollars.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 535), repealing 31 Stat. L. pt. 1, p. 1189.

Act of Maryland of 1798, ch. 101, subch. 2, sec. 3; Comp. Stat. D. C. p. 560, sec. 16.

"While the statutes regulating the probate of wills provides no time within which probate shall be applied for, yet they contemplate that this shall be speedily done," citing sections 830 and 1635a. McGowan v. Elroy, 28 App. D. C. 188 (1906); 34 W. L. R. 782.

SEC. 830a. Whosoever willfully and fraudulently makes away with, secretes, or converts to his own use any property, documents, or assets of any kind or nature belonging to the estate of a deceased person shall be punished by a fine not exceeding \$2,000 or imprisonment for not more than two years, or both.

Interpolated by Act of April 19, 1920 (41 Stat. L., pt. 1, p. 567).

SEC. 831. STEALING PROPERTY OF DISTRICT OF COLUMBIA.—Whoever shall embezzle, steal, or purloin any money, property, or writing, the property of the District of Columbia, shall suffer imprisonment for not exceeding five years, or be fined not more than five thousand dollars, or both.

SEC. 832. RECEIVING PROPERTY STOLEN FROM THE DISTRICT OF COLUMBIA.—Whoever shall receive, conceal, or aid in concealing, or have in possession, with intent to convert to his own use, any money, property, or writing, the property of the District of Columbia, knowing the same to have been embezzled, stolen, or purloined from the District of Columbia by any other person, shall be punished by a fine not exceeding five thousand dollars, or imprisonment not exceeding five years, or both.

SEC. 833. EMBEZZLEMENT.—Whoever, being charged with the collection, receipt, safe-keeping, transfer, or disbursement of public money or other property or effects belonging or payable to the District of Columbia or in the custody of the same, fraudulently converts to his own use, or to the use of any other person, body corporate, or

association whatever, or uses, by way of investment, in any kind of security, stock, loan, property, or in any other manner or form loans, with or without interest, to any company, corporation, association or individual, excepting by depositing in bank to said party's own credit, in the usual course of business, any public money, funds, property, bonds, securities, assets, or effects received, controlled, or held by him for safe-keeping or for any other purpose, shall forfeit all right, by way of commissions or compensation, to any part of the said money or other property and shall be deemed guilty of embezzlement of the whole of the money or other property thus converted, used, invested, loaned, deposited, or paid out, and shall be imprisoned for not more than twenty years and fined in a sum not exceeding double the value of the money or property embezzled.

See annotations to section 834.

SEC. 833a. Whoever, being in possession of personal property received upon a written and conditional contract of sale, with intent to defraud, sells, conveys, conceals, or aids in concealing the same, or removes the same from the District of Columbia without the consent of the vendor, before performance of the conditions precedent to acquiring the title thereto, shall be punished by a fine of not more than \$100, or by imprisonment for not more than ninety days.

Act of May 27, 1921 (42 Stat. L., pt. 1, p. 9), repealing Act of April 28, 1904 (33 Stat. L., pt. 1, p. 554).

SEC. 834. EMBEZZLEMENT BY AGENT, ATTORNEY, CLERK, OR SERVANT.—If any agent, attorney, clerk, or servant of a private person or copartnership, or any officer, attorney, agent, clerk, or servant of any association or incorporated company, shall wrongfully convert to his own use, or fraudulently take, make way with, or secrete, with intent to convert to his own use, anything of value which shall come into his possession or under his care by virtue of his employment or office, whether the thing so converted be the property of his master or employer or that of any other person, copartnership, association, or corporation, he shall be deemed guilty of embezzlement, and shall be punished by a fine not exceeding one thousand dollars, or by imprisonment for not more than ten years, or both.

See sections 826, 841, and cases there cited.

Broker who converts stock certificates delivered to him for sale is guilty of embezzlement. *Henry v. U. S.*, 50 App. D. C. 366 (1921); 49 W. L. R. 387, certiorari denied 257 U. S. 640. Pre-existing agency was not necessary. "If the agency came into existence contemporaneously with the delivery of the certificates, that would be enough." *Ib.* "It is immaterial whether he receives possession of the property from a third person or from his master; for in either case the property is under his care, and if he converts it he is guilty of embezzlement." *Ib.* "Evidence of an intent at the time of the conversion to restore the embezzled money is not admissible." *Ib.*

To sustain a conviction of grand larceny "it must be alleged and proved that the value of the property embezzled is over \$35." *Henry v. U. S.* 49 App. D. C. 207; 47 W. L. R. 297 (1919). The fact that defendant hypothecated stock and received \$4,000 therefor is not proof that the stock was worth more than \$35. *Ib.* As to proof of value of stocks, see *ib.* "The stealing or conversion of property belonging to different persons at the same time and place constitutes but a single offense and should be prosecuted as such." *Ib.*

Distinction between larceny and embezzlement. *Ambrose v. U. S.* 45 App. D. C. 112 (1916); 44 W. L. R. 274. "Generally speaking, it (embezzlement) may be defined as the fraudulent conversion of another's property by one

to whom it has been intrusted, with the intent of depriving the owner thereof." *Ib.*, citing *Masters v. U. S.*, 42 App. D. C. 350, 42 W. L. R. 370; *Fulton v. U. S.*, 45 App. D. C. 27, 44 W. L. R. 242.

"Before there can be a conversion of the property of another there must be an intent on the part of the doer of the act to convert the property to his own use without the consent of the owner. But a wrongful conversion implies a conversion by the doer of the act without color of right, and with the evil intent of converting the property to his own use. The intent to wrongfully convert the property of another implies more than the intent to merely convert. It implies a mind at fault, an evil mind, capable of intentionally committing the offense here defined by the statute." *Fulton v. U. S.*, 45 App. D. C. 27 (1916); 44 W. L. R. 242, quoting from *Masters v. U. S.*, 42 App. D. C. 350; 42 W. L. R. 370.

Defendant's reputation for honesty and integrity is admissible. *Masters v. U. S.*, 42 App. D. C. 350 (1914); 42 W. L. R. 370. Evidence by defendant of his financial standing is incompetent. *Ib.* As to proof of defendant's financial condition by the Government, see *Ambrose v. U. S.*, 112, *supra*.

An employee who, without authority, indorses his employer's name on a check payable to the latter's order, and cashes it, is guilty of forgery and not embezzlement. *Dowling v. U. S.*, 41 App. D. C. 11 (1913); 41 W. L. R. 768.

In an indictment for wrongful conversion it is not necessary to allege an intent to defraud. *Patterson v. U. S.*, 39 App. D. C. 84 (1912) (certiorari denied in 226 U. S. 609); citing *O'Brien v. U. S.*, 27 App. D. C. 263, 34 W. L. R. 546; *Gassenheimer v. U. S.*, 26 App. D. C. 432; 34 W. L. R. 80. "The principle is that where a statute prohibits an act under certain circumstances, and a person commits the act not under a mistake of fact, a criminal intention is conclusively presumed." *Ib.* Cf. *Masters v. U. S.*, *supra*. Assignment of claim to an attorney for the purpose of collection, and to cover his fee for collection does not create the relation of debtor and creditor, so as to defeat a charge of embezzlement. *Ib.*

An agent converting funds of his principal delivered to him in the District of Columbia can not be convicted of embezzlement if he formed the intent to convert outside of the District. *Woodward v. U. S.*, 38 App. D. C. 323 (1912); 40 W. L. R. 306. An agent who converts funds delivered to him on the false representation that they are needed in the principal's business is guilty of embezzlement. *Ib.*

Distinction between embezzlement and false pretenses. *Davis v. U. S.*, 37 App. D. C. 126 (1911); 39 W. L. R. 490. A general verdict of guilty on an indictment charging embezzlement and false pretenses will be set aside as inconsistent. *Ib.*

This section "describes two classes of acts, either one of which constitutes embezzlement: The first being the wrongful conversion to his own use, by the accused, of property which has come into his possession by virtue of his employment, and the second being the fraudulent taking, making way with, or secreting with intent to convert, such property to his own use." *Gassenheimer v. U. S.*, 26 App. D. C. 432 (1906); 34 W. L. R. 80. It is not necessary to allege the "particular way or means by which the conversion was effected." *Ib.* A railroad conductor who collects and subsequently sells tickets is guilty of embezzlement. *Ib.*

A count charging embezzlement by means of both of the methods set forth in the *Gassenheimer* case, *supra*, is not bad for duplicity. *O'Brien v. U. S.*, 27 App. D. C. 263 (1906); 34 W. L. R. 546. And proof of either means will sustain a conviction. *Ib.* As to intent, see *ib.*

SEC. 835. EMBEZZLEMENT OF NOTE NOT DELIVERED.—Every embezzlement of any evidence of debt negotiable by delivery only, actually executed by the master or employer of any such clerk, attorney, agent, officer, or servant, but not delivered or issued as a valid instrument, shall be deemed an offense within the meaning of the last preceding section.

Referred to but not construed in *Gassenheimer v. U. S.*, 26 App. D. C. 432 (1906); 34 W. L. R. 80.

SEC. 836. RECEIVING WITH KNOWLEDGE.—Every person who shall buy or in any way receive anything of value, knowing the same to

have been embezzled, taken, or secreted contrary to the provisions of any of the three next preceding sections, shall be punished in the same manner and to the same extent as prescribed in said sections, respectively.

"To convict the defendant, it was necessary to prove, first, that the property had been embezzled by Barnes in the District of Columbia * * * and second, that the defendant had bought, or in any way received, it from Barnes, 'knowing the same to have been embezzled, etc.,' as provided in section 836." *Gassenheimer v. U. S.*, 26 App. D. C. 432 (1906); 34 W. L. R. 80. *Quaere*: Whether this section embraces "the receipt of property that may have been embezzled in another jurisdiction, as embezzlement is defined in our Code, or is limited to that which may have been embezzled in the District of Columbia." *Ib.*

SEC. 836a. Any person who by the commission outside of the District of Columbia of any act which, if committed within the District of Columbia, would be a criminal offense under the laws of said District, thereby obtains any property or other thing of value, and is afterwards found with any such property or other such thing of value in his possession in said District, or who brings any such property or other such thing of value into said District, shall, upon conviction, be punished in the same manner as if said act had been committed wholly within said District.

Interpolated by act approved December 21, 1911 (37 Stat. L., pt. 1, p. 45).

SEC. 837. CARRIERS AND INNKEEPERS.—Any person intrusted with anything of value, to be carried for hire, or being an innkeeper and intrusted by his guest with anything of value for safe-keeping, who fraudulently converts the same to his own use, shall be deemed guilty of embezzlement and punished as provided in section eight hundred and thirty-four.

Bookkeeper and clerk in hotel is not an "innkeeper" as defined in this section. *Chanock v. U. S.*, 50 App. D. C. 54 (1920); 48 W. L. R. 367.

Referred to but not construed in *Fields v. U. S.*, 27 App. D. C. 433; 34 W. L. R. 382; writ of error dismissed in 205 U. S. 292.

SEC. 838. WAREHOUSEMAN, AND SO FORTH.—Any warehouseman, factor, storage, forwarding, or commission merchant, or his clerk, agent, or employee, who, with intent to defraud the owner thereof, sells, disposes of, or applies or converts to his own use any property intrusted or consigned to him, or the proceeds or profits of any sale of such property, shall be deemed guilty of embezzlement, and shall suffer imprisonment for not more than ten years.

Referred to but not construed in *Fields v. U. S.* (see sec. 837).

One who receives and takes possession of produce as the agent of the owner to sell for them is a factor or commission merchant within the meaning of this section. *Green v. U. S.*, 25 App. D. C. 549 (1905); 33 W. L. R. 535. And this is so, although defendant had no store and was engaged in the brokerage business. *Ib.*

SEC. 839. MORTGAGOR IN POSSESSION.—Any mortgagor of personal property in possession of the same, who, with intent to defraud the owner of the claim secured by the mortgage, removes any of the mortgaged property out of the District, or secretes or sells the same, or converts the same to his own use, shall be deemed guilty of embezzlement, and shall be punished by a fine not exceeding one thousand dollars, or by imprisonment for not more than five years, or both.

SEC. 840. TAKING AWAY OR CONCEALING WRITINGS.—Whoever, with intent to defraud or injure another person, shall take away or conceal any writing whereby the estate or right of such other person shall or may be defeated, injured, or altered shall suffer imprisonment for not more than seven years.

The words "whereby the estate, etc.," do not modify the word "writing," but the section is to be read as though there were a comma after the latter word. *Miller v. U. S.*, 41 App. D. C. 52 (1913); 41 W. L. R. 718; certiorari denied in 231 U. S. 755. As to sufficiency of averments of indictment under this section, see *ib.*

SEC. 841. EXECUTORS AND OTHER FIDUCIARIES.—Any executor, administrator, guardian, trustee, receiver, collector, or other officer into whose possession money, securities, or other property of the property or estate of any other person may come by virtue of his office or employment, who shall fraudulently convert or appropriate the same to his own use, shall forfeit all right or claim to any commissions, costs, and charges thereon, and shall be deemed guilty of embezzlement of the entire amount or value of the money or other property so coming into his possession and converted or appropriated to his own use, and shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding ten years, or both.

See section 834.

"Intent to defraud is an essential element of the crime denounced by section 841." *Ambrose v. U. S.*, 45 App. D. C. 112 (1916); 44 W. L. R. 274. Mere commingling of trust funds with personal funds "affords no sufficient basis for a presumption of evil intent." *Ib.* In proving such intent "it is competent for the Government to prove the financial condition of the accused at or immediately prior to the alleged offense." *Ib.* When evidence of similar offenses is admissible, see *ib.*

As to sufficiency of indictment, see *Fields v. U. S.*, 27 App. D. C. 433 (1906); 34 W. L. R. 382 (writ of error dismissed and certiorari denied 205 U. S. 292). "Section 841 comprehends property that may have passed into the defendant's possession as receiver before the time that it went into effect, when embezzled thereafter." *Ib.* A sentence under this section containing the words "at labor" will be modified by striking out such words as surplusage. *Ib.*

SEC. 842. FALSE PRETENSES.—Whoever, by any false pretense, with intent to defraud, obtains from any person anything of value, or procures the execution and delivery of any instrument of writing or conveyance of real or personal property, or the signature of any person, as maker, indorser, or guarantor, to or upon any bond, bill, receipt, promissory note, draft, or check, or any other evidence of indebtedness, and whoever fraudulently sells, barter, or disposes of any bond, bill, receipt, promissory note, draft, or check, or other evidence of indebtedness, for value, knowing the same to be worthless, or knowing the signature of the maker, indorser, or guarantor thereof to have been obtained by any false pretenses, shall, if the value of the property or the sum or value of the money or property mentioned or described in the instrument so obtained, procured, sold, bartered, or disposed of is thirty-five dollars or upward, be imprisoned not less than one year nor more than three years; or, if less than that sum, shall be fined not more than two hundred dollars or imprisoned for not more than *one year*, or both. Any person who obtains any lodging, food, or accommodation at an inn, boarding house, or lodging house, without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at such an inn, boarding

house, or lodging house by the use of any false pretense, or who, after obtaining credit or accommodation at such an inn, boarding house, or lodging house, absconds or surreptitiously removes his baggage therefrom without paying for his food, accommodation, or lodging, shall be deemed guilty of a misdemeanor, and upon conviction thereof in the police court of the District of Columbia be fined not more than one hundred dollars or imprisoned not more than six months, or both, in the discretion of said court.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 535), increasing penalty.

By cashing worthless check. *Clagett v. U. S.*, 53 App. D. C. 134 (1923); 51 W. L. R. 523. It is no defense in such cases that defendant subsequently reimbursed the prosecuting witness, nor that defendant at time of transaction intended to repay the money. *Ib.* Cf. Act of July 1, 1922 (42 Stat. L., pt. 1, p. 820), p. 498, Appendix.

False representation must be made to the person defrauded. *Foster v. Goldsoll*, 48 App. D. C. 505 (1919).

"False pretense or representation * * * must relate to some subsisting fact, past or present. A statement as to the future by way of opinion or expectation as to what can be accomplished does not constitute false pretense." *Engle v. U. S.*, 48 App. D. C. 466 (1919); 47 W. L. R. 295.

"The elements of the offense are a false pretense or false representation by the defendant or some one acting for and instigated by him, knowledge by the defendant as to the falsity, reliance on the pretense or representation by the person defrauded, intent to defraud, and an actual defrauding." *Robinson v. U. S.*, 42 App. D. C. 186 (1914); 42 W. L. R. 308. "It is for the jury to determine whether each of those elements has been established by the evidence, and the court is not authorized to invade the province of the jury by telling them that if certain facts are proved the intent to defraud is made out." *Ib.* As to intent to defraud, see *ib.*

As to admissibility of kindred acts to establish guilty knowledge or fraudulent intent, see *Partridge v. U. S.*, 39 App. D. C. 571 (1913); 41 W. L. R. 99. A promissory note is a thing of value within the meaning of the statute. *Ib.* It is not necessary that false pretense should be the sole inducement for parting with the property; it is sufficient "if it had a preponderating influence sufficient to turn the scale, although other considerations operated upon the mind of the party." *Ib.* Statement by defendant that prosecuting witness should not rely on representations but should satisfy himself by observation and inquiry, is not sufficient to relieve of criminal liability for false representation theretofore made unless it appears that prosecuting witness accepted withdrawal of representations and assumed to act entirely on his own judgment. *Ib.*

Abusive words conveying the meaning that plaintiff had, by trick or artifice, obtained entrance into a theater, do not charge the indictable offense of false pretenses. *Friedlander v. Rapley*, 38 App. D. C. 208 (1912); 40 W. L. R. 101.

Distinction between embezzlement and false pretenses. *Davis v. U. S.*, 37 App. D. C. 126 (1911); 39 W. L. R. 490.

False pretense is a crime against the United States, and persons conspiring to commit it may be punished under section 5440 of the Revised Statutes, United States. *Geist v. U. S.*, 26 App. D. C. 594 (1906); 34 W. L. R. 257.

SEC. 843. FORGERY.—Whoever, with intent to defraud or injure another, falsely makes or alters any writing of a public or private nature, which might operate to the prejudice of another, or passes, utters, or publishes, or attempts to pass, utter, or publish as true and genuine, any paper so falsely made or altered, knowing the same to be false or forged, with the intent to defraud or prejudice the right of another, shall be imprisoned for not less than one year nor more than ten years.

See section 151, Penal Code (construed in *Price v. U. S.*, 53 App. D. C. 164 (1923); 51 W. L. R. 525) relative to forged obligations and securities of the United States.

It is not essential that "any one shall be actually defrauded, or that the accused shall have the intent to defraud any particular person. All that is required in that respect is that there be an intent to defraud some one." *Easterday v. U. S.*, 53 App. D. C. 387 (1923); 51 W. L. R. 694. *Read v. U. S.*, 52 W. L. R. (Ct. App.) 566 (1924).

Indictment for uttering need not set forth the particular acts claimed to constitute such uttering. *Fuller v. U. S.*, 53 App. D. C. 88 (1923); 51 W. L. R. 345.

Elements of offense: "There must be a false making or other alteration of some instrument in writing; there must be a fraudulent intent; and the instrument must be apparently capable of effecting a fraud * * *. Intent in forgery will not be presumed from the mere making of a false instrument. It must be gathered from some affirmative act, or from the existence of circumstances from which criminal intent may be inferred." *Dowling v. U. S.*, 41 App. D. C. 11 (1913); 41 W. L. R. 768, quoting from *Frisby v. U. S.*, 38 App. D. C. 22; 40 W. L. R. 20. (See sec. 834.)

"The statute defines two distinct criminal acts, either of which constitutes the crime of forgery. The making of a false instrument with intent to defraud is forgery. The uttering of a forged instrument with intent to defraud is forgery. But where the instrument is both forged and uttered by the same person, * * * there is only the single crime of forgery committed." *Frisby v. U. S.*, 38 App. D. C., 22, *supra* (1912). See *Frisby v. U. S.*, 35 App. D. C. 513 (1910); 38 W. L. R. 750. See also *Simon v. U. S.*, 37 App. D. C. 280 (1911); 39 W. L. R. 392, holding that both acts may be charged in the indictment, or the pleader may elect to charge but one. "It matters not that at common law the charge of falsely making an instrument was held to include the offense of falsely altering it, since they are disjunctively named in the statute as distinct ways in which the crime of forging may be committed. Forgery is a statutory, not a common law crime in this District, and the offense must be charged as defined in the statute, irrespective of common-law rules of pleading." *Ib.* See, however, *Read v. U. S.*, 52 W. L. R. (Ct. App.) 566 (1924), wherein it is said, "The offense thus denounced (by sec. 843) is complete even though the instrument never is uttered. When it is uttered, another and distinct offense is committed, and a second uttering, of course, constitutes still another offense. In *Frisby v. U. S.*, 38 App. D. C. 27, the question was not directly involved and the *Burton* case (202 U. S. 344) was not brought to our attention."

Belief of existence of authority to make writing as a defense. *Towles v. U. S.*, 19 App. D. C. 471 (1902); 30 W. L. R. 286.

Howgate v. U. S., 7 App. D. C. 217 (1895); 24 W. L. R. 518.

SEC. 844. DESTROYING OR DEFACING PUBLIC RECORDS.—Whoever maliciously or with intent to injure or defraud any other person defaces, mutilates, destroys, abstracts, or conceals the whole or any part of any record authorized by law to be made, or pertaining to any court or public office in the District, or any paper duly filed in such court or office, shall be fined not more than three hundred dollars or imprisoned not more than two years, or both.

SEC. 845. FALSE CERTIFICATE OF ACKNOWLEDGMENT.—Any officer authorized to take the proof or acknowledgment of an instrument which, by law, may be recorded, who willfully certifies falsely that the instrument was acknowledged by any party thereto, or who willfully certifies falsely as to any other material matter in such acknowledgment, shall be imprisoned for not less than one year nor more than ten years.

SEC. 845a. Whoever having no title or color of title to the land affected shall maliciously cause to be recorded in the office of the recorder of deeds of the District of Columbia any deed, contract, or other instrument purporting to convey or to relate to any land in said District with intent to extort money or anything of value from any person owning such land, or having any interest therein, shall be fined not less than five hundred dollars or imprisoned not more than two years, or both.

SEC. 846. MALICIOUS INJURY.—Whoever maliciously places an obstruction on or near the track of any steam or street railway, or displaces or injures anything appertaining to such track, with intent to endanger the passage of any locomotive or car, shall be imprisoned for not more than ten years.

SEC. 847. Whoever maliciously cuts down or destroys, by girdling or otherwise, any standing or growing vine, bush, shrub, sapling, or tree on the land of another, or severs from the land of another any product standing or growing thereon, or any other thing attached thereto, shall, if the value of the thing destroyed or the amount of damage done to any such thing or to the land is thirty-five dollars or more, be imprisoned for not less than one year nor more than three years, or, if such value or amount is less than that sum, shall be fined not less than five dollars nor more than one hundred dollars, or be imprisoned not more than one year, or both.

SEC. 848. Whoever maliciously injures or destroys, or attempts to injure or destroy, by fire or otherwise, any movable property not his own, of the value of thirty-five dollars or more, shall be punished by imprisonment for not less than one year and not more than ten years, and if the value of the property be less than thirty-five dollars, by a fine not exceeding two hundred dollars, or by imprisonment not exceeding one year, or both.

Act of July 29, 1892 (27 Stat. L. 322) ; 34 Stat. L. 126.

This section supersedes a portion of Acts cited above. *Nation v. D. C.*, 34 App. D. C. 453 (1910). Indictment or information must allege value of property injured. *Ib.* Quaere: Whether prosecution can be in the name of the District of Columbia, if the value of the property is more than \$35 (see sec. 932). *Ib.*

SEC. 849. STEALING OR INJURING BOOKS, AND SO FORTH.—Any person who shall steal, wrongfully deface, injure, mutilate, tear, or destroy any book, pamphlet, or manuscript, or any portion thereof belonging to the Library of Congress, or to any public library in the District of Columbia, whether the property of the United States or of the *District of Columbia* or of any individual or corporation in said District, or who shall steal, wrongfully deface, injure, mutilate, tear, or destroy any book, pamphlet, document, manuscript, print, engraving, medal, newspaper, or work of art, the property of the United States, shall be held guilty of a misdemeanor, and, on conviction thereof, shall, when the offense is not otherwise punishable by some statute of the United States, be punished by a fine of not less than ten dollars nor more than one thousand dollars, and by imprisonment for not less than one month nor more than one year, or both, for every such offense.

32 Stat. L., p. 535.

Act of June 30, 1902, 32 Stat. L., p. 535.

SEC. 850. If any person shall maliciously cut down, demolish, or otherwise injure any railing, fence, or inclosure around or upon any cemetery, or shall injure or deface any tomb or inscription thereon, he shall be fined not more than one hundred dollars.

SEC. 851. FORCIBLE ENTRY AND DETAINER.—Whoever shall forcibly enter upon any premises, or, having entered without force, shall unlawfully detain the same by force against any person previously in the peaceable possession of the same and claiming right thereto,

shall be punished by imprisonment for not more than one year or a fine of not more than one hundred dollars, or both.

See section 824.

SEC. 851a. Whoever shall be guilty of any offense defined in sections eight hundred and thirty-four, eight hundred and thirty-five, eight hundred and thirty-six, eight hundred and thirty-seven, and eight hundred and thirty-eight of the Code of Law for the District of Columbia shall, where the thing, evidence of debt, property, proceeds or profits be of the value of not more than thirty-five dollars, be punished by imprisonment for not more than one year or a fine of not more than five hundred dollars, or both.

Act of March 3, 1913 (37 Stat. L., pt. 1, p. 727).

See citations under sections referred to in this section.

SEC. 851b. That if any person entrusted with the possession of anything of value, including things savoring of the realty, for the purpose of applying the same for the use and benefit of the owner or person so delivering it, shall fraudulently convert the same to his own use he shall, where the value of the thing so converted is thirty-five dollars or more, be punished by imprisonment for not less than one nor more than ten years, or by a fine of not more than one thousand dollars, or both; and where the value of the thing so converted is less than thirty-five dollars he shall be punished by imprisonment for not more than one year or by a fine of not more than five hundred dollars, or both: *Provided*, That nothing contained in this section shall be construed to alter or repeal the foregoing sections contained in Subchapter II of Chapter XIX of this code.

Act approved Mar. 3, 1913 (37 Stat. L., pt. 1, p. 727).

"Under the provisions of this section, the possession of property must be intrusted 'for the purpose of applying the same for the use and benefit' of the person so intrusting it; that is, the person to whom intrusted must be clothed with some actual dominion and control over the property for the purpose named. Otherwise, he is a mere temporary custodian, and, if he wrongfully appropriates the property he is guilty of larceny, and not of the crime denounced by this section." *Atkinson v. U. S.*, 53 App. D. C. 277 (1923); 51 W. L. R. 520.

Taking held to be embezzlement and not larceny after trust. *Henry v. U. S.*, 50 App. D. C. 366 (1921); 49 W. L. R. 387. *Talbert v. U. S.*, 42 App. 1 (1914); 42 W. L. R. 194.

Section has no bearing on larceny by fraud or trick. *Talbert v. U. S.*, *supra*.

SUBCHAPTER THREE

OFFENSES AGAINST THE PUBLIC PEACE

SEC. 852. CHALLENGING TO FIGHT A DUEL.—If any person shall in the District challenge another to fight a duel, or send or deliver any written or verbal message purporting or intended to be such challenge, or shall accept any such challenge or message, or shall knowingly carry or deliver an acceptance of such challenge or message to fight a duel in or out of the District, he shall be punished by imprisonment for a term not exceeding ten years.

SEC. 853. ASSAULTING FOR REFUSAL.—If any person shall assault, beat, or wound, or cause to be assaulted, beaten, or wounded, any person in the District for refusing to accept such challenge, or cause him to be published or posted as a coward, or use other opprobrious

language in such publication tending to degrade and disgrace him for so declining or refusing such challenge, he shall be punished by imprisonment for a term not exceeding three years.

SEC. 854. LEAVING THE DISTRICT TO FIGHT.—If any person, for the purpose of evading the provisions aforesaid, shall leave the District, by previous arrangement or concert within the same, with intent to give or receive any such challenge without the District, and shall give or receive the same accordingly, the person or persons so offending shall be punished in the same manner as if said challenge had been given and received within the District.

SEC. 855. CARRYING WEAPONS.—Any person who shall within the District of Columbia have concealed about his person any deadly or dangerous weapon, or who shall carry openly any such weapon, with intent to unlawfully use the same, shall be fined not less than fifty dollars nor more than five hundred dollars, or be imprisoned not exceeding one year, or both: *Provided*, That the officers, noncommissioned officers, and privates of the United States Army, Navy, or Marine Corps, or of any regularly organized militia company, police officers, officers guarding prisoners, officials of the United States or the District of Columbia engaged in the execution of the laws for the protection of persons or property, when any of such persons are on duty, shall not be liable for carrying necessary arms for use in performance of their duty: *Provided further*, That nothing contained in this section shall be so construed as to prevent any person from keeping or carrying about his place of business, dwelling house, or premises any such dangerous or deadly weapon, or from carrying the same from place of purchase to his dwelling house or place of business, or from his dwelling house or place of business to any place where repairing is done to have the same repaired and back again: *Provided further*, That nothing contained in this section shall be so construed as to apply to any person who shall have been granted a written permit to carry such weapon or weapons by any judge of the police court of the District of Columbia; and authority is hereby given to any such judge to grant such permit for a period of not more than one month at any one time, upon satisfactory proof to him of the necessity for the granting thereof, and, further, upon the filing with such judge of a bond, with sureties to be approved by said judge, by the applicant for such permit, conditioned to the United States in such penal sum as said judge shall require for the keeping of the peace, save in the case of necessary self-defense by such applicant during the continuance of said permit, which bond shall be put in suit by the United States for its benefit upon any breach of such condition.

"The defendant had a right to carry the revolver, loaded or unloaded, from the place of purchase to his home; and whether he had it on his person at the time of his arrest, for that purpose only, or for some unlawful purpose as well, was a question of fact, which should have been submitted to the jury." *Bell v. U. S.* 49 App. D. C. 367 (1920); 48 W. L. R. 456.

SEC. 856. All such weapons, as hereinbefore described, which may be taken from any person offending against any of the provisions of the last preceding section shall, upon conviction of such person, be disposed of as may be ordered by the judge trying the case, and the record shall show any and all such orders relating thereto as a part of the judgment in the case.

SEC. 857. SELLING, AND SO FORTH, TO MINORS.—Any person or persons who shall, within the District of Columbia, sell, barter, hire, lend, or give to any minor under the age of twenty-one years any such weapon as hereinbefore described shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than one hundred dollars or be imprisoned not more than three months, or both. No person shall engage in or conduct the business of selling, bartering, hiring, lending, or giving any weapon or weapons of the kind hereinbefore named without having previously obtained from the Commissioners of the District of Columbia a special license authorizing the conduct of such business by such person, and the said Commissioners are hereby authorized to grant such license, without fee therefor, upon the filing with them by the applicant therefor of a bond, with sureties to be by them approved, conditioned in such penal sum as they shall fix, to the United States, for the compliance by said applicant with all the provisions of this section, and upon any breach or breaches of said condition said bond shall be put in suit by said United States for its benefit, and said Commissioners may revoke said license. Any person engaging in said business without having previously obtained said special license shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of not less than one hundred dollars nor more than five hundred dollars, of which one-half shall be paid to the informer, if any, whose information shall lead to the conviction of the person paying said fine; and in default of payment of said fine shall be imprisoned for not more than six months. All persons whose business is to sell, barter, hire, lend, or give any such weapon or weapons shall be, and they hereby are, required to keep a written register of the name and residence of every purchaser, barterer, hirer, borrower, or donee of any such weapon or weapons, together with a full description of such weapon, which register shall be subject to the inspection of the major and superintendent of the Metropolitan police of the District of Columbia; and, further, to make a report, under oath, on or before the first Tuesday of each and every month, to said major and superintendent of all such sales, barterings, hirings, lendings, or gifts, together with the respective names and residences of the person buying or receiving such weapon. Any person failing to keep such register or to make such reports shall be fined not more than one hundred dollars and the Commissioners may revoke his license.

SUBCHAPTER FOUR

OFFENSES AGAINST PUBLIC JUSTICE

SEC. 858. PERJURY.—Every person who, having taken an oath or affirmation before a competent tribunal, officer, or person, in any case in which the law authorized such oath or affirmation to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath or affirmation states or subscribes any material matter which he does not believe to be true, shall be guilty of perjury; and any person con-

victed of perjury or subornation of perjury shall be punished by imprisonment in the penitentiary for not less than two nor more than ten years. Any such false testimony, declaration, deposition, or certificate given in the District of Columbia, but intended to be used in a judicial proceeding elsewhere, shall also be perjury within the meaning of this section.

See sections 184, 652, 691, 732, 1291.

Conspiracy to commit perjury, *Fletcher v. U. S.*, 42 App. D. C. 53 (1914); 42 W. L. R. 178.

"A person accused of perjury can not be convicted upon the uncorroborated testimony of one witness. The charge must be proved either by the testimony of two witnesses, or by one with proof of corroborating circumstances." *Cook v. U. S.*, 26 App. D. C. 427 (1906); 34 W. L. R. 550.

Perjury in making false statements in civil service applications, *Johnson v. U. S.*, 26 App. D. C. 128 (1905); 33 W. L. R. 679.

SEC. 859. FALSE PERSONATION.—Whoever falsely personates another person before any court of record or judge thereof, or clerk of court, or justice of the peace, or any officer in the District authorized to administer oaths or take the acknowledgment of deeds or other instruments or to grant marriage licenses, with intent to defraud, shall be imprisoned for not less than one year nor more than five years.

SEC. 860. Whoever falsely represents himself to be a justice of the peace, notary public, police officer, constable, or other public officer, or a minister qualified to celebrate marriage, and attempts to perform the duty or exercise the authority pertaining to any such office or character, or having been duly appointed to any of such offices shall knowingly attempt to act as any of such officers after his appointment or commission has expired or he has been dismissed from such office, shall suffer imprisonment in the penitentiary for not less than one year nor more than three years.

SEC. 861. BRIBERY.—Whoever promises, offers, or gives, or causes or procures to be promised, offered, or given, any money or other thing of value, or makes or tenders any contract, undertaking, obligation, credit, or security for the payment of money, or for the delivery or conveyance of anything of value, to any executive, judicial, or other officer, or to any person acting in any official function, or to any juror or witness, with intent to influence the decision, action, verdict, or evidence of any such person on any question, matter, cause, or proceeding or with intent to influence him to commit or aid in committing, or to collude in or allow any fraud, or make any opportunity for the commission of any fraud, shall be fined not more than five hundred dollars, or be imprisoned not more than three years, or both.

See section 93, Criminal Code, United States.

Eagon v. U. S., 52 App. D. C. 384 (1922); 51 W. L. R. 242 (prosecution under secs. 113 and 117, U. S. Penal Code).

"There can be no bribery of any official to do a particular act, unless the law requires or imposes upon him the duty of acting." *Thomson v. U. S.*, 37 App. D. C. 461 (1911); 39 W. L. R. 734, citing *Benson v. U. S.*, 27 App. D. C. 331; 34 W. L. R. 366.

SEC. 862. THREATS.—Whoever corruptly, by threats or force, endeavors to influence, intimidate, or impede any juror, witness, or officer in any court in the District in the discharge of his duties, or, by threats or force, in any other way obstructs or impedes or en-

deavors to obstruct or impede the due administration of justice therein, shall be fined not more than two hundred dollars or imprisoned not more than three years, or both.

SUBCHAPTER FIVE

OFFENSES AGAINST PUBLIC POLICY

SEC. 863. LOTTERIES.—If any person shall within the District keep, set up, or promote, or be concerned as owner, agent, or clerk, or in any other manner, in managing any policy lottery or policy shop, or shall sell or transfer any ticket, certificate, bill, token, or other device purporting or intended to guarantee or assure to any person or entitle him to a chance of drawing or obtaining a prize, to be drawn in any lottery, or in the game or device commonly known as policy lottery or policy, or shall, for himself or another person, sell or transfer, or have in his possession for the purpose of sale or transfer, or shall aid in selling, exchanging, negotiating, or transferring a chance or ticket in or share of a ticket in any policy lottery or any such bill, certificate, token, or other device, he shall be fined not more than five hundred dollars or be imprisoned not more than *three years*, or both.

See section 911.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 535), increasing penalty.

Knoll v. U. S., 26 App. D. C. 457 (1906) ; 34 W. L. R. 94 ; certiorari denied, 201 U. S. 643.

SEC. 864. If any person shall knowingly permit, on any premises under his control in the District, the sale of any chance or ticket in or share of a ticket in any lottery or policy lottery, or shall knowingly permit any lottery or policy lottery or policy shop on such premises, he shall be fined not less than fifty dollars nor more than five hundred dollars, or be imprisoned not more than one year, or both.

SEC. 865. GAMING.—Whoever shall in the District set up or keep any gaming table, or any house, vessel, or place, on land or water, for the purpose of gaming, or gambling device commonly called A B C, faro bank, E O, roulette, equality, keno, thimbles, or little joker, or any kind of gaming table or gambling device adapted, devised, and designed for the purpose of playing any game of chance for money or property, or shall induce, entice, and permit any person to bet or play at or upon any such gaming table or gambling device, or on the side of or against the keeper thereof, shall be punished by imprisonment for a term of not more than five years.

Act of January 31, 1883 (22 Stat. L., p. 411).

Handbook on horse races. Swan v. U. S., 54 App. D. C. 100 ; 52 W. L. R. 22 (1924), citing Miller v. U. S., 6 App. D. C. 6 (1895) ; 23 W. L. R. 209, wherein it is said : "Any games, devices, or contrivances set up or kept for the purpose of gaming, or any gambling device, so set up and kept, adapted, devised, and designed for the purpose of playing any game of chance for money or property, and to which the public may resort to bid or wager money, is a gaming table within the meaning of the statute. The definition of a gaming table under the statute does not involve the ordinary mechanical definition of a table, but depends for its statutory meaning upon the means or contrivances adopted for playing the game." Nelson v. U. S., 28 App. D. C. 32 (1906) ; 34 W. L. R. 533 (crap game) ; Wade v. U. S., 33 App. D. C. 29 (1909) ; 37 W. L. R. 246 (betting on horse races).

"Two offenses are created by section 865. One is the setting up or keeping of a gaming table or device; the other is the keeping of a house, vessel, or place for the purpose of gaming." *Wade v. U. S.*, supra.

SEC. 866. Whoever in the District knowingly permits any gaming table, bank, or device to be set up or used for the purpose of gaming in any house, building, vessel, shed, booth, shelter, lot, or other premises to him belonging or by him occupied, or of which at the time he has possession or control, shall be punished by imprisonment in the jail for not more than one year or by a fine not exceeding five hundred dollars, or both.

An indictment charging an offense under this section cannot be sustained by proof of a violation of section 865. "In order to warrant a conviction under section 866 it is necessary that a defendant shall knowingly permit a gambling device to be set up or used for the purpose of gaming upon premises owned or occupied by him, or of which at the time of the commission of the offense he had possession or control." *Nelson v. U. S.*, 28 App. D. C. 32 (1906); 34 W. L. R., 533.

SEC. 867. THREE-CARD MONTE, AND SO FORTH.—Whoever shall in the District deal, play, or practice, or be in any manner accessory to the dealing or practicing, of the confidence game or swindle known as three-card monte, or of any such game, play, or practice, or any other confidence game, play, or practice, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one thousand dollars and by imprisonment for not more than five years.

See cases cited under sections 865-866.

SEC. 868. WHAT IS GAMING TABLE.—All games, devices, or contrivances at which money or any other thing shall be bet or wagered shall be deemed a gaming table within the meaning of these sections; and the courts shall construe the preceding sections liberally, so as to prevent the mischief intended to be guarded against.

See cases cited under sections 865-866.

SEC. 869. POOL SELLING, AND SO FORTH.—It shall be unlawful for any person or association of persons to bet, gamble, or make books or pools on the result of any trotting or running race of horses, or boat race, or race of any kind, or on any election, or any contest of any kind, or game of base ball. Any person or association of persons violating the provisions of this section shall be fined not exceeding five hundred dollars or be imprisoned not more than ninety days, or both.

Act of May 16, 1908 (35 Stat. L., p. 164), repealing 31 Stat. L., p. 1189.

Pfeiffer v. U. S., 31 App. D. C. 109 (1908); 36 W. L. R. 471; certiorari denied in 235 U. S. 704.

Persons engaging in wagering contests are not accomplices. *Paylor v. U. S.*, 42 App. D. C. 428 (1914); 42 W. L. R. 741.

SEC. 869a. AN ACT TO PROHIBIT BUCKETING AND BUCKET SHOPPING AND TO ABOLISH BUCKET SHOPS.—The following words and phrases used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings:

"Person" shall mean an individual, partnership, corporation, or association, whether acting in his or their own right or as the officer, agent, servant, correspondent, or representative of another.

"Contract" shall mean any agreement, trade, or transaction.

"Securities" shall mean all evidences of debt or property and options for the purchase and sale thereof, shares in any corporation or association, bonds, coupons, scrip, rights, choses in action, and other evidences of debt or property and options for the purchase or sale thereof.

"Commodities" shall mean anything movable that is bought and sold.

"Bucket shop" shall mean any room, office, store, building, or other place where any contract prohibited by this Act is made or offered to be made.

"Keeper" shall mean any person owning, keeping, managing, operating, or promoting a bucket shop, or assisting to keep, manage, operate, or promote a bucket shop.

"Bucketing" or "bucket shopping" shall mean: (a) The making of or offering to make any contract respecting the purchase or sale, either upon credit or upon margin, of any securities or commodities wherein both parties thereto intend, or such keeper intends, that such contract shall be, or may be, terminated, closed, or settled according to or upon the basis of the public market quotations of prices made on any board of trade or exchange upon which said securities or commodities are dealt in and without a bona fide purchase or sale of the same; or (b) the making of or offering to make any contract respecting the purchase or sale, either upon credit or upon margin, of any securities or commodities, wherein both parties intend, or such keeper intends, that such contract shall be, or may be, deemed terminated, closed, or settled when such public market quotations of prices for the securities or commodities named in such contract shall reach a certain figure without a bona fide purchase or sale of the same; or (c) the making of or offering to make any contract respecting the purchase or sale, either upon credit or upon margin, of any securities or commodities wherein both parties do not intend, or such keeper does not intend, the actual or bona fide receipt or delivery of such securities or commodities, but do intend, or such keeper does intend, a settlement of such contract based upon the differences in such public market quotations of prices at which said securities or commodities are or are asserted to be bought and sold.

Act of March 1, 1909 (35 Stat. L., pt. 1, p. 670).

The words "any contract defined in the preceding section," as used in section 869b, "were intended to refer, and did in fact refer, to bucketing and bucket-shopping contracts, or to 'agreements, trades, or transactions' relating thereto." *U. S. v. Cella*, 37 App. D. C. 423 (1911); 39 W. L. R. 749; certiorari denied in 223 U. S. 728. Conspiracy to violate section 869a. *Ib.* Quære: Whether good faith on the part of a person dealing with the keeper of a bucket shop would constitute a good defense to a charge against him for a violation of the provisions of this section. *Ib.* As to constitutionality of act, see *ib.*

SEC. 869b. Any person who makes or offers to make any contract defined in the preceding section, or who is the keeper of any bucket shop, shall, upon conviction thereof, be punished by a fine not exceeding one thousand dollars or by imprisonment for not more than one year. Any person who shall be convicted of a second offense shall be punished by imprisonment for not more than five years. The continuing of the keeping of a bucket shop by any person after the first conviction therefor shall be deemed a second offense under this Act.

If a domestic corporation shall be convicted of a second offense, the supreme court of the District of Columbia shall have jurisdiction, upon an information in equity in the name of the United States district attorney for the District of Columbia, on the relation of the Commissioners of the District of Columbia, to dissolve the corporation; and if a foreign corporation shall be convicted of a second offense, the supreme court of the District of Columbia shall have jurisdiction, in the same manner, to restrain the corporation from doing business in the District of Columbia.

Act of March 1, 1909 (35 Stat. L., p. 670).

See cases cited under section 869a.

SEC. 869c. Any person who shall communicate, receive, exhibit, or display in any manner any statement of quotations of prices of any securities or commodities with an intent to make, or offer to make, or to aid in making, or offering to make any contract prohibited by this Act, upon conviction thereof shall be subject to the penalties provided in the preceding section.

Act of March 1, 1909 (35 Stat. L., p. 670).

See cases cited under section 869a.

SEC. 869d. Every person shall furnish, upon demand, to any customer or principal for whom such person has executed any order for the actual purchase or sale of any securities or commodities, either for immediate or future delivery, a written statement, containing the names of the persons from whom such property was bought or to whom it has been sold, as the fact may be, the time when, place where, and the price at which the same was either bought or sold; and if such person shall refuse or neglect to furnish such statement within twenty-four hours after such demand such refusal or neglect shall be prima facie evidence that such purchase or sale was bucketing or bucket shopping within the terms of this Act.

Act of March 1, 1909 (35 Stat. L., p. 670).

See cases cited under section 869a.

SUBCHAPTER SIX

OFFENSES AGAINST MORALITY

SEC. 870. BIGAMY.—Whoever, having a husband or wife living, marries another shall be deemed guilty of bigamy, and on conviction thereof shall suffer imprisonment for not less than two nor more than seven years: *Provided*, That this section shall not apply to any person whose husband or wife has been continually absent for five successive years next before such marriage without being known to such person to be living within that time, or whose marriage to said living husband or wife shall have been dissolved by a valid decree of a competent court, or shall have been pronounced void by a valid decree of a competent court on the ground of the nullity of the marriage contract.

1 James 1, ch. 11 (repealed by sec. 5352, R. S. U. S.; Knight v. U. S., 6 App. D. C. 1 (1895); 23 W. L. R. 202).

SEC. 871. SEDUCTION BY TEACHER.—Any male person, over twenty-one years of age, who is superintendent, tutor, or teacher in any

public or private school, seminary, or other institution, or instructor of any female in any branch of instruction, who has sexual intercourse with any female under twenty-one years of age *and not under sixteen years of age*, with her consent, while under his instruction during the term of his engagement as superintendent, tutor, or teacher, shall be imprisoned for not less than one year nor more than ten.

Act of June 30, 1902 (32 Stat. L., p. 535).

SEC. 872. INDECENT PUBLICATIONS.—Whoever sells, or offers to sell, or give away, in the District, or has in his possession with intent to sell or give away or to exhibit to another, any obscene, lewd, or indecent book, pamphlet, drawing, engraving, picture, photograph, instrument, or article of indecent or immoral use, or advertises the same for sale, or writes or prints any letter, circular, handbill, book, pamphlet, or notice of any kind stating by what means any of such articles may be obtained, or advertises any drug, nostrum, or instrument intended to produce abortion, or gives or participates in, or by bill, poster, or otherwise advertises, any public exhibition, show, performance, or play containing obscene, indecent, or lascivious language, postures, or suggestions, or otherwise offending public decency, shall be fined not less than fifty dollars nor more than five hundred dollars, or imprisoned not more than one year, or both.

Guilty knowledge must be alleged and proved. *Moens v. U. S.*, 50 App. D. C. 15 (1920); 48 W. L. R. 230. "If the indictment had charged knowledge of the character of the pictures in the possession of the accused, the criminal intent in exhibiting them would be implied from the guilty knowledge of their nature." *Ib.*

SEC. 873. SEDUCTION.—If any person shall seduce and carnally know any female of previous chaste character, between the ages of sixteen and twenty-one years, out of wedlock, such seduction and carnal knowledge shall be deemed a misdemeanor, and the offender, being convicted thereof, shall be punished by imprisonment for a term not exceeding three years, or fined not exceeding two hundred dollars, or may be punished by both such fine and imprisonment.

"The object of the statute is to protect the chaste virgin against betrayal from an honest belief in the betrayer's protestations of love and affection, or an existing promise of marriage, or a present unqualified promise of marriage as an inducement for the commission of the act," but does not cover a promise of marriage contingent upon pregnancy resulting from the intercourse. *Hamilton v. U. S.*, 41 App. D. C. 359 (1914); 42 W. L. R. 50.

Subsequent marriage of the parties no bar to prosecution. *Bray v. U. S.*, 39 App. D. C. 600 (1913); 41 W. L. R. 103. Virginity is the test of chastity. *Ib.* Subsequent misconduct of prosecutrix with others is inadmissible "unless, perhaps, when improper relations with others follow closely upon the commission of the offense by the accused, and are preceded by proof of circumstances tending to show that the prosecutrix had not been previously chaste." *Ib.*

SEC. 874. ADULTERY.—Whoever commits adultery in the District shall, on conviction thereof, be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year, or both; and when the act is committed between a married woman and a man who is unmarried both parties to such act shall be deemed guilty of adultery; and when such act is committed between a married man and a woman who is unmarried, the man only shall be deemed guilty of adultery.

Two charges of adultery with the same person may be joined under section 1024, Revised Statutes United States. *Kleindienst v. U. S.*, 48 App. D. C. 190 (1918); 46 W. L. R. 770. When indictment charges two specific acts of adultery, and the proof shows "repeated offenses of adultery" extending over a period of more than a year, it is error to refuse to require the Government to specify, at the close of its case, the specific acts for which the Government asks a conviction. *Ib.* One convicted of adultery should be sentenced under section 874 of the code and not under section 316 of the Penal Code. *Ib.*

SEC. 875. INCEST.—If any person in the District related to another person within and not including the fourth degree of consanguinity, computed according to the rules of the Roman or civil law, shall marry or cohabit with or have sexual intercourse with such other so-related person, knowing him or her to be within said degree of relationship, the person so offending shall be deemed guilty of incest, and, on conviction thereof, shall be punished by imprisonment for not more than twelve years.

SUBCHAPTER SEVEN

MISCELLANEOUS

SEC. 876. PRIZE FIGHTING, AND SO FORTH.—Any person who shall voluntarily engage in a pugilistic encounter between man and man or a fight between a man and a bull or any other animal, for money or for other thing of value, or for any championship, or upon the result of which any money or any thing of value is bet or wagered, or to see which any admission fee is charged, either directly or indirectly, shall be deemed guilty of a felony, and upon conviction shall be punished by imprisonment not less than one nor more than five years.

By the term "pugilistic encounter," as used in this section, is meant any voluntary fight by blows by means of fists or otherwise, whether with or without gloves, between two or more men, for money or for a prize of any character, or for any other thing of value, or for any championship, or upon the result of which any money or thing of value is bet or wagered, or to see which any admission fee is charged, either directly or indirectly.

SEC. 877. USING BOTTLES OF DEALERS IN MINERAL WATERS.—All manufacturers and vendors of mineral waters and other beverages allowed by law to be sold in bottles, upon which their names or marks shall be respectively impressed, may file with the clerk of the supreme court of the District a description of such bottles and of the names or marks thereon, and shall cause the same to be published for not less than two weeks successively in a daily or weekly newspaper published in the District.

SEC. 878. It shall be unlawful for any person, without the permission of the owner thereof, to fill with mineral waters or other beverages any such bottles so marked, for sale, or to traffic in any such bottles so marked and not bought by him of such owner; and every person so offending shall be liable to a penalty of fifty cents for every bottle so filled, or sold, or used, or disposed of, or bought, or trafficked in, for the first offense, and of five dollars for every subsequent offense, to be recovered as other fines are recovered in the District.

SEC. 878a. That the following words shall, in addition to their ordinary meaning, have the meaning herein given: The word "per-

son" or "persons," in sections eight hundred and seventy-eight b, c, d, e, and g, inclusive, shall include "firms" or "corporations;" the word "vessel" or "vessels," in sections eight hundred and seventy-eight b, c, d, and e, shall include "cans," "bottles," "siphons," and "boxes;" the word "mark" or "marks" shall include "labels," "trade-marks," and all other methods of distinguishing ownership in vessels, whether printed upon labels or blown into bottles or engraved and impressed upon cans or boxes.

Act of February 27, 1907 (34 Stat. L., pt. 1, p. 1006).

SEC. 878b. That persons engaged in producing, manufacturing, bottling, or selling milk or cream, or any other lawful beverages composed principally of milk, in vessels, with their name, trade-mark, or other distinctive mark, and the word "registered" branded, engraved, blown, or otherwise produced thereon, or on which a paster trade-mark label is put upon which the word "registered" is also distinctly printed, may file with the clerk of the supreme court of the District of Columbia a description by facsimile, or a sample of an original package so marked or branded or blown, showing plainly such names and marks thereon, together with their name in full, or their corporate name, and also their place of business in the District of Columbia, and if so filed shall cause the same to be published for not less than two weeks successively in a daily or weekly newspaper published in the District of Columbia.

Act of February 27, 1907 (34 Stat. L., pt. 1, p. 1006).

SEC. 878c. That whoever, except the person who shall have filed and published a description of the same as aforesaid, fills with milk or cream, or other beverage, as aforesaid, with intent to sell the same, any vessel so marked and distinguished as aforesaid, the description of which shall have been filed and published as provided in the preceding section, or defaces, erases, covers up, or otherwise removes or conceals any such name or mark as aforesaid, or the word "registered," thereon, or sells, buys, gives, takes, or otherwise disposes of, or traffics in the same without having purchased the contents thereof from the person whose name is in or upon such vessel, or without the written consent of such person, shall, for the first offense, be punished by a fine of not less than fifty cents for each such vessel, or by imprisonment for not less than ten days nor more than one year, or by both such fine and imprisonment; and for each subsequent offense by a fine of not less than one nor more than five dollars for each such vessel, or by imprisonment for not less than twenty days nor more than one year, or by both such fine and imprisonment.

Act of February 27, 1907 (34 Stat. L., pt. 1, p. 1006).

D. C. v. Simpson, 40 App. D. C. 498 (1913); 41 W. L. R. 402.

SEC. 878d. That the use or possession by any person not engaged in the production or sale of milk or cream or other beverage as aforesaid, except the person who shall so have filed and published a description of the same as aforesaid, of any vessel marked or distinguished as aforesaid, the description of which shall have been filed and published as aforesaid, without purchase of the contents thereof from, or the written consent of, the person who shall so

have filed and published the said description, shall be *prima facie* evidence of the unlawful use, possession of, or traffic in, such vessel, and the person so using or in possession of the same, except the person who shall so have filed and published the said description as aforesaid, shall be punished as in the next preceding section provided.

Act of February 27, 1907 (34 Stat. L., pt. 1, p. 1006).

SEC. 878e. That upon complaint of any person who has complied with section eight hundred and seventy-eight b, or of his agent, to the police court of the District of Columbia, or one of the judges thereof, that such person, or agent, has reason to believe, and does believe, that any person within the District of Columbia is guilty of the violation of any provision of this Act, the said court or judge may issue a search warrant to discover and obtain such vessels as aforesaid and their contents, and may also cause to be brought before the said court or judge the person so believed to be guilty, or his agent or employee, in whose possession or upon whose wagon or premises any such vessel or vessels may be found; and any such person, agent, or employee found guilty of a violation of any of the provisions of this Act shall be punished as aforesaid, and the said court or judge shall also order the property taken upon any such search warrant to be delivered to its owner.

Act of February 27, 1907 (34 Stat. L., pt. 1, p. 1006).

SEC. 878f. That the clerk of the supreme court of the District of Columbia is hereby authorized to make regulations and prescribe forms for the filing of labels, trade-marks, or other distinctive marks under the provisions of the foregoing amendments to section eight hundred and seventy-eight.

Act of February 27, 1907 (34 Stat. L., pt. 1, p. 1006).

SEC. 878g. That nothing in the foregoing amendments to section eight hundred and seventy-eight shall prevent or restrain any person who is the legal owner of a trade-mark or label from proceeding in an action of tort against any person found guilty of violating any subsection of section eight hundred and seventy-eight.

Act of February 27, 1907 (34 Stat. L., pt. 1, p. 1006).

SEC. 879. FORGING OR IMITATING LABELS, AND SO FORTH.—Whoever willfully forges or counterfeits or makes use of any imitation calculated to deceive the public, though with colorable difference or deviation therefrom, of the private brand, wrapper, label, trade-mark, bottle, or package usually affixed or used by any person to or with the goods, wares, merchandise, preparation, or mixture of such person, with the intent to pass off any work, goods, manufacture, compound, preparation, or mixture as the manufacture or production of such person which is not really such, shall be fined not more than five hundred dollars or imprisoned not more than one year, or both.

SEC. 880. DESTROYING BOUNDARY TREES.—Whoever maliciously cuts down, destroys, or removes any boundary tree, stone, or other mark or monument, or maliciously effaces any inscription thereon, either of his own lands or of the lands of any other person whatsoever, even though such boundary or bounded trees should stand within the person's own land so cutting down and destroying the same, shall be

fined not more than one thousand dollars and imprisoned not exceeding one year.

SEC. 881. TRESPASSING ON CAPITOL GROUNDS.—Public travel in and occupancy of the Capitol grounds shall be restricted to the roads, walks, and places prepared for the purpose by flagging, paving, or otherwise.

SEC. 882. It is forbidden to occupy the roads therein in such manner as to obstruct or hinder their proper use; to drive violently upon them or with animals not under perfect control, or to use them for the conveyance of goods or merchandise except to or from the Capitol on Government service.

SEC. 883. It is forbidden to offer or expose any article for sale; to display any sign, placard, or other form of advertisement; to solicit fares, alms, subscriptions, or contributions therein.

SEC. 884. It is forbidden to step or climb upon, remove, or in any way injure any statue, seat, wall, or other erection, or any tree, shrub, plant, or turf therein.

SEC. 885. It is forbidden to discharge any firearms, firework, or explosive, set fire to any combustible, make any harangue or oration, or utter loud, threatening, or abusive language therein.

SEC. 886. It is forbidden to parade, stand, or move in processions or assemblages, or display any flag, banner, or device designed or adapted to bring into public notice any party or organization or movement therein.

SEC. 887. Offenses against the six preceding sections shall be punishable by fine or imprisonment, or both, the fine not to exceed one hundred dollars, the imprisonment not to exceed sixty days; but in the case of heinous offenses, by reason of which public property shall have suffered damage to an amount exceeding one hundred dollars in value, the offense shall be punishable by imprisonment in the penitentiary for a period of not less than six months nor more than five years.

SEC. 888. It shall be the duty of all policemen and watchmen having authority to make arrests in the District of Columbia to be watchful for offenses against these sections, and to arrest and bring before the proper tribunal those who shall offend against them under their observation or of whose offenses they shall be advised by witnesses.

SEC. 889. It shall be the duty of all persons employed in the service of the Government in the Capitol or on its grounds to prevent, as far as may be in their power, offenses against these sections, and to aid the police, by information or otherwise, in securing the arrest and conviction of the offenders.

SEC. 890. WHO MAY SUSPEND PROHIBITION.—In order to admit of the due observance within the Capitol grounds of occasions of national interest becoming the cognizance and entertainment of Congress, the President of the Senate and the Speaker of the House of Representatives, acting concurrently, are hereby authorized to suspend for such proper occasion so much of the above prohibitions as would prevent the use of the roads and walks of the said grounds by processions or assemblages and the use upon them of suitable decorations, music, addresses, and ceremonies: *Provided*, That responsible officers shall have been appointed and arrangements determined adequate in the judgment of the said President of the Senate

and Speaker of the House of Representatives for the maintenance of suitable order and decorum in the proceedings and for guarding the Capitol and its grounds from injury. In the absence from Washington of either of the officers designated in this section the authority therein given to suspend certain prohibitions of this subchapter shall devolve upon the other, and in the absence from Washington of both it shall devolve upon the Capitol police commission.

SEC. 891. GRAVE ROBBERY.—Whoever, without legal authority or without the consent of the nearest surviving relative, shall disturb or remove any dead body from a grave for the purpose of dissecting, or of buying, selling, or in any way trafficking in the same, shall be imprisoned not less than one year nor more than three years.

SEC. 892. LIMITATION OF HOURS OF DAILY SERVICE FOR LABORERS AND MECHANICS ON PUBLIC WORKS.—The service and employment of all laborers and mechanics who are now or may hereafter be employed by the Government of the United States, by the District of Columbia, or by any contractor or subcontractor upon any of the public works of the United States or of the said District of Columbia, is hereby limited and restricted to eight hours in any one calendar day; and it shall be unlawful for any officer of the United States Government or of the District of Columbia, or any such contractor or subcontractor, whose duty it shall be to employ, direct, or control the service of such laborers or mechanics, to require or permit any such laborer or mechanic to work more than eight hours in any calendar day except in case of extraordinary emergency.

27 Stat. L., p. 340.

34 Stat. L., pp. 33 and 669.

37 Stat. L., p. 137.

Section is constitutional. *Penn Bridge Co. v. U. S.*, 29 App. D. C. 452 (1907); 35 W. L. R. 287. "In this statute the term 'extraordinary emergency' imports a sudden and unexpected happening; an unforeseen occurrence or condition calling for immediate action to avert imminent danger to health, or life, or property; an unusual peril, actual and not imaginary, suddenly creating a situation so different from the usual or ordinary course in the prosecution of the public work that the court may and must conclude that Congress contemplated excepting from the operation of this law such an occurrence, so sudden, rare, and unforeseen." *Ib.* Whether the evidence offered tends to prove the existence of such an emergency is a question of law for the court. *Ib.*

SEC. 893. Any officer or agent of the Government of the United States or of the District of Columbia, or any contractor or subcontractor, whose duty it shall be to employ, direct, or control any laborer or mechanic employed upon any of the public works of the United States or of the District of Columbia who shall intentionally violate any provision of the last preceding section for each and every such offense shall be punished by a fine not to exceed one thousand dollars or by imprisonment for not more than six months, or both.

See annotations to section 892.

SEC. 894. The provisions of the two next preceding sections shall not be so construed as to in any manner apply to or affect contractors or subcontractors or to limit the hours of daily service of laborers or mechanics engaged upon the public works of the United States or of the District of Columbia for which contracts were entered into prior to August first, eighteen hundred and ninety-two.

See annotations to section 892.

SEC. 895. HARBOR REGULATIONS.—Every vessel coming to anchor in the Potomac River between the junction of the Washington and Georgetown channels of said river and the extension of the south line of P street southwest, in the city of Washington, shall anchor as near the flats in said river as possible, so that the channel of said river will not be obstructed; and if such vessel is to remain over twelve hours it shall be moored with both anchors, so as to give room for passing vessels and so as not to swing and obstruct said channel. *Every vessel coming to anchor in any other portion of the navigable waters in the District of Columbia shall also be so moored under the direction of the harbor master, or the pilot of the police boat acting in the harbor master's absence, as not to obstruct the channel, and be secured with an anchor at bow and stern as to keep the long axis of the vessel parallel with that of the channel and prevent it from swinging so as to obstruct the free passage of the channel by other vessels.*

No vessel shall be permitted to anchor in the Washington channel of the Potomac River between a point one thousand feet south of the south line of P street and the north line of K street south extended, each point to be designated by a white buoy; and all vessels coming to anchor above the north line of K street south aforesaid shall come to anchor as near the flats as possible and so that the channel will not be obstructed; and all vessels coming to anchor shall be so moored by the use of both anchors as to prevent obstruction of the channel within four hundred feet of the nearest wharf, the said anchorage to continue only twenty-four hours unless otherwise ordered or directed by the harbor master.

No vessel shall be permitted to lie in Seventeenth street canal, New Jersey avenue canal, James Creek canal, or at the entrance thereof, so as to obstruct the passage of any vessel going into or out of the same or moving from one place to another therein, unless such obstructing vessel is actually engaged in loading or unloading, and shall then, if deemed expedient by the harbor master, be removed to such place as shall be necessary to give room to passing vessels. Any captain or owner of or any one in charge of any barge, sand scow, or any vessel that may sink in said canals (or) *the captain or owner of any sunken vessel or other structure in any dock or at the end of any wharf in the District of Columbia*, shall raise and remove the same in five days. Any vessel at the end of wharves or in docks shall, when required by the harbor master, haul either way to accommodate vessels going in or coming out from such wharves or docks. They shall not occupy regular steamers' or sailing packets' berths without permission from the recognized occupants of such wharves and dock, and they are required to rig in all fore-and-aft spars, have boats hoisted up under the bow, and davits turned up, as the harbor master may direct. Vessels when not engaged in loading or discharging cargo shall give place to such vessels as are ready to receive or deliver freights; and if the captain or person in charge of any vessel refuse to move said vessel when notified by the occupant of the wharf at which she is lying, the harbor master shall order him to haul to some other berth or into the stream. The powers and authority herein conferred upon the harbor master may, in his absence or temporary disability, be exercised by the pilot of the harbor police boat.

Any person refusing to obey the instructions of the harbor master, or, in case of his absence or temporary disability, the said pilot of the harbor police boat, or any person failing to comply with any of the provisions of this section, shall be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding six months, or both.

Act of February 8, 1904 (33 Stat. L., pt. 1, p. 11).

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 535), repealing 31 Stat. L., p. 1189.

SEC. 895a. That it shall be unlawful for any owner or occupant of any wharf or dock, any master or captain of any vessel, or any person or persons to cast, throw, drop, or deposit any stone, gravel, sand, ballast, dirt, oyster shells, or ashes in the water in any part of the Potomac River or its tributaries in the District of Columbia, or on the shores of said river below high-water mark, unless for the purpose of making a wharf, after permission has been obtained from the Commissioners of the District of Columbia for that purpose, which wharf shall be sufficiently inclosed and secured so as to prevent injury to navigation.

That it shall be unlawful for any owner or occupant of any wharf or dock, any captain or master of any vessel, or any other person or persons to cast, throw, deposit, or drop in any dock or in the waters of the Potomac River or its tributaries in the District of Columbia any dead fish, fish offal, dead animals of any kind, condemned oysters in the shell, watermelons, cantaloupes, vegetables, fruits, shavings, hay, straw, or filth of any kind whatsoever.

That nothing in this Act contained shall be construed to interfere with the work of improvement in or along the said river and harbor under the supervision of the United States Government.

That any person or persons violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding six months, or both, in the discretion of the court.

Interpolated by act of February 3, 1913 (37 Stat. L., pt. 1, p. 656).

SEC. 896. NET FISHING IN POTOMAC RIVER, AND SO FORTH.—It shall not be lawful for any person to fish with fyke net, pound net, stake net, weir, float net, gill net, haul seine, dip net, or any other contrivance, stationary or floating, in the waters of the Potomac River and its tributaries within the District of Columbia: *Provided*, That this section shall not be construed to prevent the use of barrel nets or pots for the catching or killing of eels or prevent the United States Commissioner of Fish and Fisheries or his agents from taking from said waters, in any manner desired, fish of any kind for scientific purposes or for purposes of propagation, and that nothing herein contained shall apply to persons employed in catching young catfish, smelt, chub, bull minnows, and crayfish for use as bait in fishing with hook and line: *Provided further*, That any person engaged in taking such catfish, smelt, chub, bull minnows, and crayfish shall first have procured a written permit from the said Commissioner of Fish and Fisheries to take such bait for hook-and-line fishing.

Respective rights of Virginia and Maryland in waters of Potomac River. *Evans v. U. S.*, 31 App. D. C. 544 (1908); 36 W. L. R. 442. See also *Herald v. U. S.*, 52 App. D. C. 147 (1922); 50 W. L. R. 778. *Coal Co. v. U. S.*, 257 U. S. 47.

SEC. 897. BASS.—That no person shall catch or kill in the waters of the Potomac River or its tributaries within the District of Columbia any black bass (otherwise known as green bass and chub), crappie (otherwise known as calico bass and strawberry bass), between the first day of April and the twenty-ninth of May of each year, nor have in possession or expose for sale any of said species of fish at any other time during the year except by angling, nor catch nor kill any of the aforesaid species by what are known as out lines or trot lines, having a succession of hooks or devices.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 536), repealing 31 Stat. L., p. 1189.

SEC. 898. SHAD OR HERRING.—It shall be unlawful for any person to have in possession or expose for sale in the District of Columbia after the tenth day of June in any year any fresh fish of the shad or herring species.

SEC. 899. SMALL FISH.—It shall be unlawful for any person to expose for sale in the District of Columbia at any time during the year any striped bass or rockfish or black bass having a length of less than nine inches.

SEC. 900. USE OF EXPLOSIVES, AND SO FORTH.—It shall be unlawful for any person to catch or kill in the waters of the Potomac River or its tributaries within the District of Columbia any fish by means of explosives, drugs, or poisons.

SEC. 901. DEPOSITS OF DELETERIOUS MATTER.—No person shall allow any tar, oil, ammoniacal liquor, or other waste products of any gas works or works engaged in using such products, or any waste product whatever of any mechanical, chemical, manufacturing, or refining establishment to flow into or be deposited in Rock Creek or the Potomac River or any of its tributaries within the District of Columbia or into any pipe or conduit leading to the same.

The prohibition of this section is "general and unqualified, and applies to all alike," and prevents the discharge of any such waste products. *Holden v. U. S.*, 24 App. D. C. 318 (1904); 33 W. L. R. 34, certiorari denied, 196 U. S. 639.

As to civil liability resulting from pollution of river, *Brennan Construction Co. v. Cumberland*, 29 App. D. C. 554 (1907); 35 W. L. R. 354.

SEC. 902. PENALTIES.—Any person who shall violate any of the provisions of the six next preceding sections shall be fined for each and every such offense not less than ten dollars nor more than one hundred dollars, and in default of payment of fine shall be imprisoned for a period not exceeding six months; and any officer or other person securing such conviction shall be entitled to and receive one-half of any fine or fines imposed upon and paid by the party or parties adjudged guilty.

SEC. 903. That all nets, boats, or other contrivances, the property of any person or persons convicted under the provisions of this Act, shall be confiscated to the District of Columbia, and the same shall be sold at public auction to the highest bidder, by the property clerk of said District, and the proceeds therefrom be deposited with the collector of taxes, as are other District revenues.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 536), repealing 31 Stat. L., p. 1189.

SUBCHAPTER EIGHT

GENERAL PROVISIONS

SEC. 904. DEFINITION OF TERMS.—Except where such a construction would be unreasonable, the words “writing” and “paper,” wherever mentioned in this chapter, are to be taken to include instruments wholly in writing or wholly printed, or partly printed and partly in writing.

SEC. 905. The words “anything of value,” wherever they occur in this chapter, shall be held to include not only things possessing intrinsic value, but bank notes and other forms of paper money, and commercial paper and other writings which represent value.

SEC. 906. ATTEMPTS TO COMMIT CRIME.—Whoever shall attempt to commit any crime, which attempt is not otherwise made punishable by this chapter, shall be punished by a fine not exceeding one thousand dollars or by imprisonment for not more than one year, or both.

One who assaults a female under 16 years of age, with intent to carnally know her, is punishable under section 803 and not section 906. *Sanselo v. U. S.*, 44 App. D. C. 508 (1916); 44 W. L. R. 210.

SEC. 907. SECOND CONVICTION.—Every person upon his second conviction of any criminal offense punishable by fine or imprisonment or both may be sentenced to pay a fine not exceeding fifty per centum greater, and to suffer imprisonment for a period not more than one-half longer than the maximum fine and imprisonment for the first offense.

Sec. 1161, R. S. D. C. (construed in *Latney v. U. S.*, 18 App. D. C. 265 (1901); 29 W. L. R. 363.

SEC. 908. PERSONS ADVISING, INCITING, OR CONNIVING AT CRIMINAL OFFENSE TO BE CHARGED AS PRINCIPALS.—In prosecutions for any criminal offense all persons advising, inciting, or conniving at the offense, or aiding or abetting the principal offender, shall be charged as principals and not as accessories, the intent of this section being that as to all accessories before the fact the law heretofore applicable in cases of misdemeanor only shall apply to all crimes, whatever the punishment may be.

There may be a conviction on the uncorroborated testimony of an accomplice. “provided the jury is admonished by the court that the testimony of an accomplice ‘ought to be received with suspicion, and with the very greatest care and caution.’” *Eagan v. U. S.*, 52 App. D. C. 384 (1923); 50 W. L. R. 242.

“Anyone knowingly and voluntarily cooperating with, aiding, assisting, advising, or encouraging another in the commission of a crime is an accomplice; and this is true, regardless of the degree of his guilt.” *Eagan v. U. S.*, supra. The giver of a bribe is an accomplice of the person bribed. *Ib.*

Weisberg v. U. S., 49 App. D. C. 28 (see annotation under sec. 829).

“Persons engaged in wagering contests are not accomplices.” *Paylor v. U. S.*, 42 App. D. C. 428 (1914); 42 W. L. R. 741, certiorari denied, 235 U. S. 704.

Indictment charging that A, B, and C made an assault on X with a brick held in the hand of B is not defective as charging A and C with an impossible act. “The defendants were charged as principals. They were acting together and the act of one was the act of each. The question is set at rest by section 908 of the code.” *Polen v. U. S.*, 41 App. D. C. 4 (1913); 41 W. L. R. 817.

Woman upon whom a miscarriage is produced in violation of section 809 is not an accomplice of the person who produces it. *Thompson v. U. S.*, 30 App. D. C. 352 (1908); 36 W. L. R. 98.

"One who procures, commands, advises, instigates, or incites the commission of an offense, though not personally present at its commission, is, by the common law, an accessory before the fact. * * * The section of the code above quoted (908) makes all such persons principals. And it is not essential that any specific time or mode of committing the offense shall have been advised or commanded, or, if so, that it shall have been committed in the particular way instigated. * * * Nor is it necessary that there shall have been any direct communication between the actual perpetrator and the accessory, who, under the code, is now a principal." *Maxey v. U. S.*, 30 App. D. C. 63 (1907); 35 W. L. R. 446.

In cases of carnal knowledge, the prosecutrix is not an accomplice of the defendant. "An accomplice is one who is associated with another, or others, in the commission of a crime. Liability to indictment, under ordinary conditions, is a reasonable test of the legal relation of the party to the crime and its perpetrator." *Yeager v. U. S.*, 16 App. D. C. 356 (1900); 28 W. L. R. 554.

SEC. 909. ACCESSORIES.—Whoever shall be convicted of being an accessory after the fact to any crime punishable by death shall be punished by imprisonment for not more than twenty years. Whoever shall be convicted of being accessory after the fact to any crime punishable by imprisonment shall be punished by a fine or imprisonment, or both, as the case may be, not more than one-half the maximum fine or imprisonment, or both, to which the principal offender may be subjected.

See annotations to section 908.

SEC. 910. PUNISHMENT FOR OFFENSES NOT COVERED BY PROVISIONS OF CODE.—Whoever shall be convicted of any criminal offense not covered by the provisions of any section of this code, or of any general law of the United States not locally inapplicable in the District of Columbia, shall be punished by a fine not exceeding one thousand dollars or by imprisonment for not more than five years, or both.

See act of July 16, 1912 (37 Stat. L., pt. 1, p. 192), p. 498, Appendix.

"This section obviously was enacted to cover offenses not embraced in any other section of the District Code or of any general law of the United States not locally inapplicable. It was enacted out of abundant caution, and to cover any offense for which no other provision had been made. * * * A prosecution under this section, when the facts show that the offense is covered by some specific statute, is clearly unauthorized. In other words, this section was intended to supplement, and not supersede or modify, specific statutory provisions." *Fletcher v. U. S.*, 42 App. D. C. 53 (1914); 42 W. L. R. 178.

CHAPTER TWENTY

CRIMINAL PROCEDURE

SEC. 911. SEARCHES.—Upon complaint, under oath, before the police court, or a justice of the peace, setting forth that the affiant believes and has good cause to believe that there are concealed in any house or place articles stolen, taken by robbers, embezzled, or obtained by false pretenses, forged or counterfeited coin, stamps, labels, bank bills or other instruments, or dies, plates, stamps, or brands for making the same, books or printed papers, drawings, engravings, photographs, or pictures of an indecent or obscene character, or instruments for immoral use, or any gaming table, device, or apparatus kept for the purpose of unlawful gaming, or any lottery tickets or lottery policies, particularly describing the house or place to be searched, the things to be seized, substantially alleging the offense in relation thereto and describing the person to be seized, the said court or justice may issue a warrant to the marshal or any officer of the police commanding him to search such house or place for the property or other things, and, if found, to bring the same, together with the person to be seized, before the police court.

The said warrant shall have annexed to it or inserted therein a copy of the affidavit upon which it is issued, and may be substantially in the form following:

Whereas there has been filed before ----- an affidavit, of which the following is a copy (here insert): These are therefore to command you to enter (here describe the place) and there diligently search for the said articles, goods or chattels in the said affidavit described, and that you bring the same, or any part thereof, found on said search and also the body of-----, before the police court, to be dealt with and disposed of according to law.

See espionage Act (40 Stat. L., pt. 1, p. 228 et seq.), approved June 15, 1917, p. 489, Appendix.

SEC. 912. When the warrant is executed by the seizure of the property or things described therein, the said property or things shall be delivered to the marshal, and shall be safely kept to be used as evidence.

SEC. 913. If upon the examination the court is satisfied that the offense charged with reference to the things seized has been committed, the party accused shall be committed for trial or held to bail, and said things shall remain in the custody of the marshal until the accused is tried or the right of the claimant to said things is otherwise ascertained.

SEC. 914. If the accused be discharged, the property or other things seized shall be returned to the person in whose possession they were found. If he be convicted, the property stolen, embezzled, or obtained by false pretenses shall be returned to its owner, and the

other articles before described shall be destroyed, under direction of the court.

SEC. 915. OFFENSES THAT MAY BE JOINED.—An indictment for larceny may contain a count for obtaining the same property by false pretenses, a count for embezzlement thereof, and a count for receiving or concealing the same property, knowing it to be stolen or embezzled, or any of such counts, and the jury may convict of any of such offenses, and may find any or all of the persons indicted guilty of any of said offenses.

See section 1024, R. S. U. S., and annotations in vol. 2, Federal Statutes Annotated (2d ed.), pp. 676, et seq. See also *Kleindienst v. U. S.*, 48 App. D. C. 190 (1918); 46 W. L. R. 770, and cases cited.

A general verdict of guilty on an indictment containing counts for false pretenses and embezzlement is inconsistent, and the rule "to the effect that in a criminal case a general judgment * * * of guilty on each count, cannot be reversed on error if any count is good and is sufficient to support the judgment does not apply." *Davis v. U. S.*, 37 App. D. C. 126 (1911); 39 W. L. R. 490. See also *Fulton v. U. S.*, 45 App. D. C. 27 (1916); 44 W. L. R. 242, and cases there cited.

SEC. 916. DESCRIPTION OF MONEY.—In every indictment, except for forgery, in which it is necessary to make an averment as to any money or bank bill or notes, United States Treasury notes, postal and fractional currency, or other bills, bonds, or notes, issued by lawful authority and intended to pass and circulate as money, it shall be sufficient to describe such money, bills, notes, currency, or bonds simply as money, without specifying any particular coin, note, bill, or bond; and such allegation shall be sustained by proof that the accused has stolen or embezzled any amount of coin, or any such note, bill, currency, or bond, although the particular amount or species of such coin, note, bill, currency, or bond be not proved.

SEC. 917. INTENT TO DEFRAUD.—In an indictment in which it is necessary to allege an intent to defraud, it shall be sufficient to allege that the party accused did the act complained of with intent to defraud, without alleging an intent to defraud any particular person or body corporate; and on the trial of such an indictment it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove a general intent to defraud.

Easterday v. U. S., 53 App. D. C. 387 (1923), 51 W. L. R. 694; see sec. 843.

SEC. 918. PEREMPTORY CHALLENGES.—In all trials for capital offenses the accused and the United States shall each be entitled to twenty peremptory challenges. In trials for offenses punishable by imprisonment in the penitentiary the accused and the United States shall each be entitled to ten peremptory challenges. In all other cases, civil as well as criminal, in which the plaintiff is the United States or the District of Columbia, each party shall be entitled to three peremptory challenges; and if there are several defendants, they shall be treated as one person in the allowance of such challenges.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 536), repealing 31 Stat. L., p. 1189. See section 72.

Defendant charged with adultery is entitled to a new jury panel when it appears that 12 members of the current panel acted as jurors in another case involving the keeping of a disorderly house, in which case it was shown that the defendant frequented that house for immoral purposes. *Kleindienst v. U. S.*, 48 App. D. C. 190 (1918); 46 W. L. R. 770. And a failure to exhaust the

peremptory challenges and to examine the jurors on the voir dire is no waiver of defendant's right to such new panel. *Ib.*

When cases are consolidated for trial under sec. 1024, R. S. U. S., defendant is entitled, in cases of felony, to only 10 peremptory challenges. *Miller v. U. S.*, 38 App. D. C. 361 (1912); 40 W. L. R. 210.

Five defendants jointly indicted for conspiracy are entitled to only 10 peremptory challenges to be shared between them. *Lorenz v. U. S.*, 24 App. D. C. 337 (1904); 32 W. L. R. 822; certiorari denied, 196 U. S. 640.

SEC. 919. CAUSE OF CHALLENGE NOT AVAILABLE AFTER VERDICT.—No verdict shall be set aside for any cause which might be alleged as ground for challenge of a juror before the jury are sworn, except when the objection to the juror is that he had a bias against the defendant such as would have disqualified him, and such disqualification was not known to or suspected by the defendant or his counsel before the juror was sworn.

This section "gives no new right to the defendant, and adds nothing to the discretionary powers which the courts have always exercised in such cases. If not declaratory merely of a long-existing rule of practice, it would seem rather a limitation, than otherwise, of the ordinary discretionary power of the courts to grant new trials." *Paolucci v. U. S.*, 30 App. D. C. 217 (1907); 36 W. L. R. 2; certiorari denied, 208 U. S. 617.

See section 215 and annotations, as to qualifications of jurors.

SEC. 920. WITNESSES FOR DEFENSE.—In any criminal trial the justice trying the case may allow such number of witnesses on behalf of the defendant as may appear to be necessary, the fees of such witnesses to be paid in the same manner as the fees of the witnesses for the Government: *Provided*, That the defendant makes application under oath before the trial, or, in cases of manifest necessity, during the trial, setting forth that he is not possessed of sufficient means and is actually unable to pay the fees of such witnesses, and setting forth also the names of such witnesses and what he expects to prove by them, in order that the court may be advised whether or not the testimony be material to the issue.

R. S. D. C., sec. 839; Comp. Stat. D. C., p. 474, sec. 155.

SEC. 921. DISCHARGING DEFENDANTS DURING TRIAL.—When two or more persons are jointly indicted the court may, before a defendant has gone into his defense, direct any such defendant to be discharged, that he may be a witness for the United States. An accused party may also, when there is not sufficient evidence to put him upon his defense, be discharged by the court, or, if not discharged by the court, shall be entitled to the immediate verdict of the jury for the purpose of giving evidence for the other parties accused with him; and such order of discharge, in either case, equally with the verdict of acquittal, shall be a bar to another prosecution for the same offense.

SEC. 922. DEPOSITIONS.—If a material witness for the defendant resides *beyond the District of Columbia*, or is sick or infirm, or about to leave the District, the defendant may apply in writing to the court for a commission to examine such witness upon interrogatories thereto annexed when the deposition is to be taken beyond the District of Columbia, and orally in other cases, and the court may grant the same and pass an order stating for what length of time notice shall be given to the district attorney before said witness shall be examined. At or before the time fixed in said notice, when the ex-

amination is upon written interrogatories, the district attorney may file cross-interrogatories; but if he fail to do so the clerk shall file the following:

First. Are all your statements in the foregoing answers made from your own personal knowledge? And if not, show what is stated upon information and give its source.

Second. State everything you know in addition to what is stated in your above answers concerning this case favorable to either the United States or the defendant.

For good cause shown the court may order in any case that the examination be conducted orally.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 537), secs. 24 et seq.

R. S. D. C., secs. 881 et seq.; Comp. Stat. D. C., p. 570.

SEC. 923. The commission shall issue from the clerk's office, the examination of the witnesses shall be made and certified, and the return thereof made in the same manner as in civil cases, and unimportant irregularities or errors in the proceedings under said commission shall not cause the deposition to be excluded where no substantial prejudice can be wrought to the Government by such irregularities or errors.

SEC. 924. SENTENCE.—If a new trial be not granted nor the judgment arrested the court may pronounce sentence upon the party convicted; but the execution of such sentence shall be postponed for a sufficient time to enable the defendant to prosecute an appeal, on the application of the defendant, if he shall give notice of his intention to appeal from the judgment to the court of appeals.

SEC. 925. Whenever the punishment shall be imprisonment for more than one year, it shall be sufficient for the court to sentence the defendant to imprisonment in the penitentiary without specifying the particular prison, and the imprisonment shall be in such penitentiary as the Attorney-General shall from time to time designate.

See act of June 30, 1917 (39 Stat. L., pt. 1, p. 711).

SEC. 926. TIME OF EXECUTION.—In case of a sentence of death, the time fixed for the execution of the sentence shall not be considered an essential part of the sentence, and if it be not executed at the time therein appointed, by reason of the pendency of an appeal or for other cause, the court may appoint another day for carrying the same into execution.

SEC. 927. INSANE CRIMINALS.—When any person tried upon an indictment or information for an offense is acquitted on the sole ground that he was insane at the time of its commission, that fact shall be set forth by the jury in their verdict; and whenever a person is indicted or is charged by an information for an offense, and before trial or after a verdict of guilty, prima facie evidence is submitted to the court that the accused is then insane, the court may cause a jury to be impaneled from the jurors then in attendance on the court or, if the regular jurors have been discharged, may cause a sufficient number of jurors to be drawn to inquire into the insanity of the accused, and said inquiry shall be conducted in the presence and under the direction of the court. If the jury shall find

the accused to be then insane, or if an accused person shall be acquitted by the jury solely on the ground of insanity, the court may certify the fact to the Secretary of the Interior, who may order such person to be confined in the hospital for the insane, and said person and his estate shall be charged with the expense of his support in the said hospital. The person whose sanity is in question shall be entitled to his bill of exceptions and an appeal as in other cases.

Act of April 14, 1906 (34 Stat. L., pt. 1, p. 113), repealing 31 Stat. L., p. 1189.

"Whether a prima facie case has been made by the petitioner requiring submission of the issue (of insanity) to a jury is a question submitted to the sound discretion of the trial judge." *Gonzales v. U. S.*, 40 App. D. C. 450 (1913); 41 W. L. R. 368.

"There can be no reasonable objection to the validity of the provision (sec. 927). It makes ample provision for the inquiry which is conducted with due regard to the protection of the defendant." *Wagner v. White*, 38 App. D. C. 554 (1912); 40 W. L. R. 326 (see sec. 929).

SEC. 928. Any person becoming insane while undergoing a sentence of any court of the District of Columbia for crime may, in like manner, be committed to said hospital for the insane, by order of the Secretary of the Interior, to receive the same treatment as other patients during the continuance of his disorder.

SEC. 929. RESTORATION TO SANITY.—When any person confined in the hospital for the insane, charged with crime and subject to be tried therefor or undergoing sentence therefor, shall be restored to sanity the superintendent of the hospital shall give notice thereof to the justice holding the criminal court and deliver him to the court according to its proper precept.

"But we find in it (sec. 929) nothing that precludes the right of the prisoner to have a judicial inquiry made into the fact of restoration to sanity," and he may apply for a habeas corpus in the event that the superintendent refuses to certify to his restoration to sanity. *Wagner v. White*, 38 App. D. C. 554 (see sec. 927).

SEC. 930. EXTRADITION.—In all cases where the laws of the United States provide that fugitives from justice shall be delivered up, the chief justice of the supreme court of the District of Columbia shall cause to be apprehended and delivered up such fugitive from justice who shall be found within the District, in the same manner and under the same regulations as the executive authorities of the several States are required to do by the provisions of sections fifty-two hundred and seventy-eight and fifty-two hundred and seventy-nine, title sixty-six, of the Revised Statutes of the United States, "Extradition," and all executive and judicial officers are required to obey the lawful precepts or other process issued for that purpose, and to aid and assist in such delivery.

See section 1143.

R. S. D. C., sec. 843, as amended; Comp. Stat. D. C., p. 475, sec. 159.

If evidence is conflicting as to presence of defendant in demanding State, the finding of the trial judge will not be disturbed on appeal. *Jackson v. Snyder*, 51 W. L. R. (Ct. Appls.) 777 (1923).

As to defects in indictment warranting refusal of commissioner to remove defendant from one Federal jurisdiction to another, *Whitaker v. Hitt*, 52 App. D. C. 149 (1922); 50 W. L. R. 762.

Immaterial error in requisition. *John v. Splain*, 50 App. D. C. 201 (1921); 49 W. L. R. 145.

On habeas corpus, where there is no claim that the extradition papers are not regular on their face, there is but one question open for investigation, namely, whether petitioner was in demanding State at the time the crime charged was committed. *Levy v. Splain*, 50 App. D. C. 31 (1920); 48 W. L. R. 469 (*Watts v. Splain*, 51 App. D. C. 129 (1921)). The extradition papers make out a prima facie case, and the burden of proving absence is on petitioner. *Ib.* (see also *Ellison v. Splain*, 49 App. D. C. 99 (1919); 47 W. L. R. 746. If petitioner offers proof showing with precision that he left the demanding State before the commission of the alleged crime "it would then devolve upon the person detaining him 'to show that he was a fugitive from justice by producing evidence that he was in the State at the time charged in the indictment, or to prove that said date had been erroneously charged and could be carried back to the necessary time.'" *Ib.*, citing *Hayes v. Palmer*, 21 App. D. C. 450 (1903); 31 W. L. R. 271. As to time in charges of conspiracy, see *ib.*

"An accused person may be held a reasonable time to await the preparation and transmission of extradition papers from the demanding State." *Stalling v. Splain*, 49 App. D. C. 38 (1919); 47 W. L. R. 358.

As to extradition under treaty with France (37 Stat. L. 1526), see *Foster v. Goldsoll*, 48 App. D. C. 505 (1919); certiorari denied, 250 U. S. 647.

Indictment need only show that accused was substantially charged with a crime under the law of the demanding State. The legal sufficiency of the indictment as a pleading must be tested in the courts of the demanding State. *Webster v. Splain*, 45 App. D. C. 567 (1917); 45 W. L. R. 3, distinguishing *Hard v. Splain*, 45 App. D. C. 1; 44 W. L. R. 278. See also *Wheeler v. Palmer*, 42 App. D. C. 395 (1914); 42 W. L. R. 740; citing *Lamar v. Splain*, 42 App. D. C. 300; 42 W. L. R. 327. See also *Goodale v. Splain*, 42 App. D. C. 235 (1914); *DePoilly v. Palmer*, 28 App. D. C. 324 (1906); 35 W. L. R. 21. *Farr v. Palmer*, 24 App. D. C. 234 (1904); 32 W. L. R. 712.

"It is only in cases when it is apparent that the indictment does not charge an offense at all, that another court will pass on it." *Wheeler v. Palmer*, *supra*.

"To be a fugitive from justice, in the sense of the act of Congress regulating the subject under consideration, it is not necessary that the party charged should have left the State in which the crime is alleged to have been committed, after an indictment found, or for the purpose of avoiding a prosecution anticipated or begun, but simply that, having within a State committed that which by its laws constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offense he has left its jurisdiction and is found within the territory of another." *DePoilly v. Palmer*, *supra*, quoting with approval from *Roberts v. Reilly*, 116 U. S. 97, and citing *Hayes v. Palmer*, 21 App. D. C. 458; 31 W. L. R. 271.

Palmer v. Thompson, 20 App. D. C. 273 (1902); 30 W. L. R. 483.

SEC. 931. Any associate justice of said court shall have like power, in case of the illness, absence, or other disability of the chief justice, or when any such application shall be certified to him by the chief justice.

Erroneously cited in *Harris v. Lang*, 27 App. D. C. 84; 34 W. L. R. 176.

SEC. 932. CONDUCT OF PROSECUTIONS, AND SO FORTH.—The attorney for the District of Columbia shall hereafter be known as the *corporation counsel*.

Prosecutions for violations of all police or municipal ordinances or regulations and for violations of all penal statutes in the nature of police or municipal regulations, where the maximum punishment is a fine only, or imprisonment not exceeding one year, shall be conducted in the name of the District of Columbia and by the city solicitor (*sic*) or his assistants. All other criminal prosecutions shall be conducted in the name of the United States and by the attorney of the United States for the District of Columbia or his assistants.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 537).

Corporation counsel "has no authority to prosecute offenses where the maximum punishment may be both a fine and imprisonment." *D. C. v. Simpson*, 40 *

App. D. C. 498 (1913); 41 W. L. R. 402, citing *Nation v. D. C.*, 34 App. D. C. 453; 38 W. L. R. 144. Prosecutions under section 878c should be conducted by the district attorney in the name of the United States. *Ib.*

Prosecutions under section 16 of the act of May 23, 1908 (35 Stat. L. p. 246) should be conducted by the corporation counsel in the name of the District of Columbia. *U. S. v. Capital Traction Co.*, 38 App. D. C. 469 (1912); 40 W. L. R. 246.

Prosecutions under Code sections 869a et seq. should be in the name of the United States. *U. S. v. Cella*, 37 App. D. C. 423 (1911); 39 W. L. R. 746; *certiorari denied* in 223 U. S. 728.

SEC. 933. If in any case any question shall arise as to whether under the preceding section the prosecution should be conducted by the city solicitor or by the attorney of the United States for the District of Columbia, the presiding justice shall forthwith, either of his own motion or upon suggestion of the city solicitor or the attorney of the United States, certify the case to the court of appeals of the District of Columbia, which court shall hear and determine the question in a summary way. In every such case the defendant or defendants shall have the right to be heard in the court of appeals. The decision of such court shall be final.

See annotations to section 932.

Defendant can not compel certification to court of appeals. "We think the language used means that whenever the judge or either of the officials named shall entertain a doubt as to who should conduct the prosecution, the question shall be certified to this court, and not otherwise. * * * If it is not so certified it becomes part of his regular defense." *Mullowny v. Mowatt*, 43 App. D. C. 49 (1915); 43 W. L. R. 54.

SEC. 934. PLACE OF IMPRISONMENT.—When any person shall be sentenced to imprisonment for a term not exceeding six months the court may direct that such imprisonment shall be either in the workhouse or in the jail. When any person is sentenced for a term longer than six months and not longer than one year such imprisonment shall be in the jail, and where the sentence is imprisonment for more than one year it shall be in the penitentiary. Cumulative sentences aggregating more than one year shall be deemed one sentence for the purposes of the foregoing provision. When the punishment of an offense may be imprisonment for more than one year the prosecution shall be in the supreme court of the District. When the maximum punishment is *a fine only or imprisonment for one year or less* the prosecution may be in the police court.

Act of June 30, 1902 (32 Stat. L., p. 537).

See 39 Stat. L., pt. 1, p. 711 (Appendix, *infra*, p. 457).

Cited in *Cleveland v. Mattingly*, 52 App. D. C. 374 (1923); 51 W. L. R. 212; see sec. 43.

"The provision relating to cumulative sentences 'has no reference to a sentence to pay a pecuniary fine, followed by imprisonment in default of payment, but relates only to cases in which the punishment is to be imprisonment.'" *Hartranft v. Mullowny*, 43 App. D. C. 44 (1915); 43 W. L. R. 35 (writ of error to Supreme Court dismissed, 247 U. S. 295), citing *Harris v. Lang*, 27 App. D. C. 84; 34 W. L. R. 176.

Palmer v. Lenovitz, 35 App. D. C. 303 (1910); 38 W. L. R. 474.

"Section 934 provides generally that where the sentence on any conviction is for a term exceeding one year the imprisonment shall be in the penitentiary, and applies to section 810 as directly as if it had been incorporated therein." *U. S. v. Evans*, 28 App. D. C. 264 (1906); 34 W. L. R. 739.

Sentences are not cumulative "merely because two imprisonments are made successive in point of time, if it happen that the prisoner convicted upon two separate informations receives two separate definite sentences for the two separate offenses." *Harris v. Lang*, 27 App. D. C. 84 (1906), *supra*. See also *Harris v. Nixon*, 27 App. D. C. 94 (1906); 34 W. L. R. 179.

SEC. 935. APPEALS BY UNITED STATES AND DISTRICT OF COLUMBIA.—In all criminal prosecutions the United States or the District of Columbia, as the case may be, shall have the same right of appeal that is given to the defendant, including the right to a bill of exceptions: *Provided*, That if on such appeal it shall be found that there was error in the rulings of the court during a trial, a verdict in favor of the defendant shall not be set aside.

Government may appeal from order sustaining demurrer to indictment for violation of sections 869a et seq. of the code. *U. S. v. Cella*, 37 App. D. C. 423 (1911); 39 W. L. R. 746; certiorari denied, 233 U. S. 728, citing *U. S. v. Cadaar*, 24 App. D. C. 143; 32 W. L. R. 486. *Evans v. U. S.*, 30 App. D. C. 58; 35 W. L. R. 452; certiorari quashed in 213 U. S. 297.

Court of appeals has no power to review, by writ of error, a judgment of not guilty rendered by the police court. *D. C. v. Burns*, 32 App. D. C. 203 (1908); 37 W. L. R. 33, following *U. S. v. Evans*, supra.

This section does not authorize an appeal by the Government from a verdict of not guilty in a criminal case, because only the determination of a moot question is involved, which is not a judicial function and can not be required by Congress of a Federal court. *U. S. v. Evans*, 30 App. D. C. 58 (1907), supra, citing *U. S. v. Ainsworth*, 3 App. D. C. 483, and distinguishing *D. C. v. Lynham*, 16 App. D. C. 85; *D. C. v. Garrison*, 25 App. D. C. 563; and *D. C. v. Gant*, 28 App. D. C. 186.

Government may appeal from order quashing indictment and discharging defendant without day. *Cadaar v. U. S.*, 24 App. D. C. 143 (1904), reversed, on other grounds, 197 U. S. 475.

SEC. 936. COMMUTATION OF FINE.—In all cases in the District of Columbia where a defendant is sent to jail or to the workhouse in default of the payment of a fine he shall be released upon the payment of the balance of the fine due by him after crediting thereon as paid an amount equal to the proportion the time thus served by him in the jail or workhouse bears to the whole time he was to serve under the sentence.

SEC. 937. DEDUCTION FOR GOOD CONDUCT.—All persons sentenced to and imprisoned in the jail or in the workhouse of the District of Columbia, and confined there for a term of one month or longer, who conduct themselves so that no charge of misconduct shall be sustained against them, shall have a deduction of five days in each month made from the term of their sentence and shall be entitled to their discharge so much the earlier upon the certificate of the warden of the jail for those confined in the jail and the certificate of the intendant of the Washington Asylum for those confined in the workhouse of their good conduct during their imprisonment (with the approval of the judge making the commitment); and it shall be the duty of said judge to write or cause to be written in the docket of his court, across the face of the commitment of the person to be so discharged, the following words: "Discharged by order of the court (giving date) on account of good conduct during imprisonment."

Cited (erroneously as sec. 931) in *Harris v. Lang*, 27 App. D. C. 84 (1906); 34 W. L. R. 176.

SEC. 938. BAIL.—Whenever a person charged with crime is held to bail the court shall have power to allow a deposit with the clerk of such court of money in the amount of the bail instead of requiring a bond or recognizance, and in case of default to declare such deposit forfeited to the United States or the District of Columbia as the case may be.

Pending an appeal from an order refusing to discharge defendant on habeas corpus from conviction for contempt, defendant is entitled to bail. *In re Moss*, 23 App. D. C. 474 (1904).

SEC. 939. ABANDONMENT OF PROSECUTION.—If any person charged with a criminal offense shall have been committed or held to bail to await the action of the grand jury, and within nine months thereafter the grand jury shall not have taken action on the case, either by ignoring the charge or by returning an indictment into the proper court, the prosecution of such charge shall be deemed to have been abandoned and the accused shall be set free or his bail discharged, as the case may be: *Provided, however,* That the supreme court of the District of Columbia holding a special term as a criminal court, or, in vacation, any justice of said court, upon good cause shown in writing, and, when practicable, upon due notice to the accused, may from time to time enlarge the time for the taking action in such case by the grand jury.

Arnstein v. U. S., 54 App. D. C. 199 (1924), citing *U. S. v. Cadaar*, *infra*.

This is not a statute of limitations. "The result of the failure to prosecute has reference solely to the right in the pending prosecution to be freed, if imprisoned, or released from bail, if under bond." *U. S. v. Cadaar*, 197 U. S. 475 (1905), reversing 24 App. D. C. 143; 32 W. L. R. 486.

U. S. v. Hayman, 24 App. D. C. 158 (1904); 32 W. L. R. 491.

CHAPTER TWENTY-ONE

DESCENTS

SEC. 940. CHILDREN.—On the death of any person seized of an estate in fee simple in lands, tenements, or hereditaments in the District of Columbia, and intestate thereof, the same shall descend in fee simple to such person's kindred in the following order, namely: First. To his child or children and their descendants, if any, equally.

Act of Maryland of 1786, ch. 45, sec. 2; Comp. Stat. D. C. p. 192, sec. 1.

Proof of pedigree. *Welch v. Lynch*, 30 App. D. C. 122 (1907); 35 W. L. R. 398.

Under sections 940, 950, where property descends to descendants of the maternal grandfather, the distribution is per stirpes of the grandfather and not per capita. *McManus v. Lynch*, 28 App. D. C. 381 (1906); 35 W. L. R. 18. *Smith v. Cosey*, 26 App. D. C. 569 (1906); 34 W. L. R. 271.

Horn v. Foley, 13 App. D. C. 184 (1898); 26 W. L. R. 466.

Posey v. Hanson, 10 App. D. C. 496 (1897); 25 W. L. R. 299.

SEC. 941. ESTATE DESCENDED FROM FATHER.—If there be no child or descendant of a child, and the estate descended to the intestate on the part of the father, then to the brothers and sisters of the intestate, of the blood of the father, and their descendants equally.

See annotations to section 940.

SEC. 942. If there be no brother or sister, as aforesaid, or descendant from a brother or sister, then to the grandfather on the part of the father; and if no such grandfather living, then to the descendants of such grandfather and their descendants in equal degree equally; and if no descendant of such grandfather, then to the father of such grandfather, and if none such living, then to the descendants of such father in equal degree; and so on, passing to the next lineal male paternal ancestor, and if none such, to his descendants in equal degree equally, without end.

See annotations to section 940.

SEC. 943. If there be no paternal ancestor or descendant from such ancestor, then to the mother of the intestate, and if no mother living, then to her descendants in equal degree equally.

See annotations to section 940.

SEC. 944. If there be no mother living, or descendants from such mother, then to the maternal ancestors and their descendants, in the same manner as is above directed as to the paternal ancestors and their descendants.

See annotations to section 940.

SEC. 945. ESTATE DESCENDED FROM MOTHER.—If the estate descended to the intestate on the part of the mother, and said intestate shall leave no child or descendant of a child surviving him, then the

estate shall go to his brothers and sisters, of the blood of the mother, and their descendants in equal degree equally.

See section 954.

See annotations to section 940.

SEC. 946. If there be no such brother or sister or descendant of such brother or sister, then to the grandfather on the part of the mother, and if no such grandfather living, then to his descendants in equal degree equally; if no such descendant of such grandfather, then to the father of such grandfather, and if none such living, then to his descendants in equal degree; and so on, passing to the next male maternal ancestor, and, if none such living, to his descendants in equal degree equally.

See annotations to section 940.

SEC. 947. If there be no such maternal ancestor or descendant from such maternal ancestor, then to the father, and if no father living, then to his descendants in equal degree equally; and if no father or descendant from the father, then to the paternal ancestors and their descendants, in the same manner as hereinbefore directed as to the maternal ancestors.

See annotations to section 940.

SEC. 948. ESTATE ACQUIRED BY PURCHASE.—If the estate was acquired by the intestate by purchase, or descended to or vested in him in any other manner than as hereinbefore mentioned, and there be no child or descendant of a child of such intestate, then the estate shall descend to his brothers and sisters of the whole blood and their descendants in equal degree equally.

See annotations to section 940.

SEC. 949. HALF-BLOOD BROTHERS AND SISTERS.—If there be no brother or sister of the whole blood, or descendant of such brother or sister, then to the brothers and sisters of the half blood and their descendants in equal degree equally.

See section 954.

Annotations to section 940.

SEC. 950. PATERNAL AND MATERNAL ANCESTORS ALTERNATELY.—If there be no brother or sister of the whole or the half blood, or any descendant from such, then to the father, and if no father living, then to the mother, and if no mother living, then to the grandfather on the part of the father, and if no such grandfather living, then to the descendants of such grandfather in equal degree equally; and if no such grandfather or any descendant from him, then to the grandfather on the part of the mother, and if no such grandfather, then to his descendants in equal degree equally; and so on without end, alternating the next male paternal ancestor and his descendants, and the next male maternal ancestor and his descendants, and giving preference to the paternal ancestor and his descendants.

See annotations to section 940.

SEC. 951. HUSBAND AND WIFE.—If there be no descendants or kindred of the intestate, as aforesaid, to take the estate, then the same shall go to the husband or wife, if any, as the case may be; and if the husband or wife be dead, then to his or her kindred, in the like course

as if such husband or wife had survived the intestate and had then died entitled to the estate by purchase; and if the intestate has had more husbands or wives than one, and all shall have died before such intestate, then the estate shall be equally divided among the kindred of the several husbands or wives in equal degree equally.

SEC. 952. TRUST ESTATES.—Whenever a trustee is seized of the naked legal estate in any lands, tenements, or hereditaments in fee simple, and shall die intestate thereof, the said legal estate shall be deemed to have descended to such person or persons as would inherit the beneficial estate if the same were vested in him according to the provisions aforesaid.

SEC. 953. HEIR MUST BE SUCH AT TIME OF DEATH OF ANCESTOR.—No right in the inheritance shall accrue to or vest in any person other than the children of the intestate and their descendants, unless such person is in being and capable in law to take as heir at the time of the intestate's death; but any child or descendant of the intestate born after the death of the intestate shall have the same right of inheritance as if born before his death.

Act of Maryland of 1786, ch. 45, sec. 3; Comp. Stat. D. C., p. 194, sec. 2.

SEC. 954. WHEN WHOLE AND HALF BLOOD TAKE EQUALLY.—There shall be no distinction between brothers and sisters of the whole and of the half blood, all being descendants of the same father, where the estate descended on the part of the father, nor between the brothers and sisters of the whole and the half blood, all being descendants of the same mother, where the estate descended on the part of the mother.

See sections 386a, 941, 945, 949.

SEC. 955. REPRESENTATION.—If in the descending or collateral line any father or mother shall be dead, leaving a child or children, such child or children shall, by representation, be considered in the same degree as the father or mother would have been if living, and shall have the same share of the estate as the father or mother if living would have been entitled to, and no more; and in such case, when there are more children than one, the share aforesaid shall be equally divided among such children.

See annotations to section 940.

SEC. 956. COPARCENARY.—There shall be no estate in coparcenary in the District, and where two or more persons inherit from an intestate by virtue of the provisions aforesaid they shall be tenants in common.

See section 1031.

See annotations to section 940.

SEC. 957. ANTENUPTIAL CHILDREN.—If any man shall have a child or children by any woman whom he shall afterwards marry, such child or children, if acknowledged by the man, shall, in virtue of such marriage and acknowledgment, be legitimated and capable in law of inheriting and transmitting heritable property as if born in wedlock.

Act of Maryland of 1786, ch. 45, sec. 7; Comp. Stat. D. C., p. 194, sec. 6.

SEC. 958. ILLEGITIMATE CHILDREN.—The illegitimate child or children of any female and the issue of such illegitimate child or chil-

dren shall be capable in law of taking real estate by inheritance from their mother, or from each other, or from the descendants of each other, as the case may be: *Provided, That such illegitimate child or children, or the issue of such illegitimate child or children, shall not take by descent any interest in the real estate of the mother when such mother is mentally incapacitated from making a will, and shall remain so mentally incapacitated until her death;* and where such illegitimate child or children shall die leaving no descendants or brothers or sisters, or the descendants of such brothers or sisters, then and in that case the mother of such illegitimate child or children, if living, shall be entitled as heir to the real estate of such illegitimate child or children, and if the mother be dead, the heirs of the mother shall take in like manner as if such illegitimate child or children had been born in lawful wedlock.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 537).

See section 387.

SEC. 959. ADVANCEMENTS.—Any child or children of an intestate, or their issue, who may have received from the intestate any real estate by way of advancement may elect to come into partition with his other heirs on bringing such advancement, or the value thereof at the time such advancement was received, into hotchpot with the estate descended; but such child or children, or their issue, shall not be entitled to claim a share by descent without bringing such advancement, or the value thereof as aforesaid, into the common stock or hotchpot, if there be another child or children *not equally provided for: Provided, That if any child or children or descendant shall have been advanced by the intestate by settlement or portion of personality, which shall not be equalized under the provisions of section three hundred and seventy-nine of this code, such advance shall be treated as real estate for the purposes of this section.*

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 537).

See sections 379, 1630.

Act of Maryland of 1786, ch. 45, sec. 5; Comp. Stat. D. C. p. 194, sec. 4.

Miller v. Payne, 28 App. D. C. 396 (1906); 34 W. L. R. 798.

Patten v. Glover, 1 App. D. C. 466 (1893); 21 W. L. R. 794; affirmed in 165 U. S. 394.

SEC. 960. ALIEN ANCESTORS.—In making title by descent it shall be no bar to a party claiming as heir that any ancestor, whether living or dead, through whom he derives his descent from the intestate is or has been an alien.

See sections 396, 398.

SEC. 961. PARTY COMMITTING MURDER OR MANSLAUGHTER TAKES NO INTEREST IN ESTATE OF DECEASED.—No person who shall be convicted of the felonious homicide of another, either by way of murder or manslaughter, shall take any estate or interest of any kind whatsoever in any kind of property whatsoever from that other by way of inheritance, distribution, devise, or bequest, or shall take any remainder, reversion, or executory interest dependent upon the death of that other; and the estate or interest or property to which the person so convicted would have succeeded or would have taken in any way from or after the death of the person so killed by him shall go as if the person so convicted had died before the person whom he

shall be convicted of killing. And every policy of insurance procured, directly or indirectly, by the person so convicted for his own benefit or payable to him upon the life of the person so killed shall be void. This act shall not affect the rights of bona fide purchasers of any such property for value without notice.

SEC. 962. WHEN LANDS ESCHEAT.—Any lands in the District of Columbia of which any person shall hereafter die seized in fee simple intestate, without any heir capable of inheriting, shall escheat to the United States.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 537), repealing 31 Stat. L., p. 1189.
Act of Maryland of 1781, ch. 51, sec. 5; Comp. Stat. D. C. p. 497, sec. 38.

CHAPTER TWENTY-TWO

DIVORCE

SEC. 963. PETITION.—All applications for divorce or for a decree annulling a marriage shall be made by petition to the supreme court of the District, and the proceedings thereupon shall be the same as in equity causes, except so far as otherwise herein provided: *Provided, however, That all petitions for divorce pending on the thirty-first day of December, nineteen hundred and one, may be proceeded with and disposed of under the provisions of the statutes in force on said date.*

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 537).

See section 85.

SEC. 964. PROOF REQUIRED.—No decree for a divorce, or decree annulling a marriage, shall be rendered on default, without proof; nor shall any admission contained in the answer of the defendant be taken as proof of the facts charged as the ground of the application, but the same shall, in all cases, be proved by other evidence.

"A charge of adultery should not be sustained upon circumstances of mere suspicion, but only upon clear and satisfactory evidence of guilt." *Stewart v. Stewart*, 52 App. D. C. 323 (1923); 51 W. L. R. 162, citing *Glennan v. Glennan*, 3 App. D. C. 333; 22 W. L. R. 473. *McKitrick v. McKitrick*, 49 App. D. C. 109; 47 W. L. R. 758. *Topham v. Topham*, 50 App. D. C. 229; 49 W. L. R. 115. "But that rule does not require proof beyond the possibility of doubt, nor does it necessarily require proof by eye witnesses of the actual offense. Nor do we overlook the rule that the testimony of hired detectives in such cases should be scrutinized with great caution." *Ib.* On testimony of detectives, see also *Allen v. Allen*, 52 App. D. C. 228.

Where testimony is in conflict, "the finding of the lower court will not be disturbed, unless it is palpably wrong." *Cole v. Cole*, 52 App. D. C. 302 (1923); 51 W. L. R. 232. See also 49 App. D. C. 237.

Proof of an adulterous disposition and opportunity to commit offense warrant a finding of adultery. *Allen v. Allen*, 52 App. D. C. 228 (1922); 51 W. L. R. 51.

Proof must be clear and convincing. *Symons v. Symons*, 51 App. D. C. 69 (1921); 49 W. L. R. 643. *Krous v. Krous*, 41 App. D. C. 200 (1913); 41 W. L. R. 71.

"In *Michalowicz v. Michalowicz*, 25 App. D. C. 484 (33 W. L. R. 442), it was ruled that this provision of the code is declarative of the general rule of practice in such cases and was not intended to prohibit all evidence of confessions that may have been made by a party. 'But,' said the court, 'to warrant a decree of divorce the confessions must be well established, direct, and certain, free from suspicion of collusion, and corroborated by independent facts and circumstances.'" *Cogswell v. Cogswell*, 49 App. D. C. 31 (1919). As to confessions of adultery, see also *Holden v. Matteson*, 38 App. D. C. 128 (1912); 40 W. L. R. 40.

"In the case of *Bergheimer v. Bergheimer*, 17 App. D. C. 381, we held that in divorce cases the parties to a suit are not competent to testify as witnesses in their own behalf. Therein we followed the ruling of the general term of the Supreme Court of the District in the case of *Burdette v. Burdette*, 2 Mackey, 469, and the uniform rule of practice in this District. And this rule, we think, is not affected by section 1063 of the code. * * * This section must be taken as qualified by section 964 of the code, which provides a special rule of evidence for divorce cases." *Lenoir v. Lenoir*, 24 App. D. C. 160 (1904); 32 W. L. R. 456.

SEC. 965. DECREE ANNULING MARRIAGE.—A decree annulling the marriage as illegal and void may be rendered on any of the grounds mentioned in chapter forty-three as invalidating a marriage.

Annulment of marriage for fraud, see *Lenoir v. Lenoir*, 24 App. D. C. 160 (1904) ; 32 W. L. R. 456. On grounds of lunacy, see *Mackey v. Peters*, 22 App. D. C. 341 (1903) ; 31 W. L. R. 504.

SEC. 966. CAUSES FOR DIVORCE A VINCULO AND FOR DIVORCE A MENSA ET THORO.—A divorce from the bond of marriage may be granted only where one of the parties has committed adultery during the marriage: *Provided*, That in such case the innocent party only may remarry, but nothing herein contained shall prevent the remarriage of the divorced parties to each other: *And provided*, That legal separation from bed and board may be granted for drunkenness, cruelty, or desertion: *And provided*, That marriage contracts may be declared void in the following cases:

First. Where such marriage was contracted while either of the parties thereto had a former wife or husband living, unless the former marriage had been lawfully dissolved.

Second. Where such marriage was contracted during the lunacy of either party (unless there has been voluntary cohabitation after the lunacy) or was procured by fraud or coercion.

Third. Where either party was matrimonially incapacitated at the time of marriage and has continued so.

Fourth. Where either of the parties had not arrived at the age of legal consent to the contract of marriage (unless there has been voluntary cohabitation after coming to legal age), but in such cases only at the suit of the party not capable of consenting.

"It is difficult to lay down any definite rule as to what constitutes cruelty within the provisions of this statute. It is clear, we think, that it is not necessary that the conduct be limited to such physical treatment as would endanger life or health. * * * The conduct of the offending party, in the absence of assault, may be such as to make life intolerable and thereby amount to such cruel treatment as to justify a decree of separation. * * * It is sufficient if the evidence, in the absence of physical violence, establishes conduct which creates a state of mind which operating upon the physical system produces bodily injury." *Waltenberg v. Waltenberg*, 54 App. D. C. 383 ; 52 W. L. R. 423 (1924). On cruelty, see also *Snow v. Snow*, 48 App. D. C. 448 (1919) ; 47 W. L. R. 178; certiorari denied, 250 U. S. 641.

"No definite period of desertion is prescribed. Intent, therefore, plays an important part in determining the question. While actual separation and intention to desert must exist together to constitute desertion, it is apparent that they need not be identical in their commencement. Thus, if the departure antedates the intention to desert, the period of desertion dates from the time such intention was formed (*Hitchcock v. Hitchcock*, 15 App. D. C. 81), while if the intention to desert antedates the departure, the period commences to run from the time of the latter." *Moncure v. Moncure*, 51 App. D. C. 292 (1922) ; 50 W. L. R. 196. See also *Blandy v. Blandy*, 20 App. D. C. 535 (1902) ; 30 W. L. R. 808.

Ill temper and differences over financial matters are not sufficient to justify desertion. "Acts justifying desertion must be such as would support a decree for divorce." *Underwood v. Underwood*, 50 App. D. C. 323 (1921) ; 49 W. L. R. 212. "The wife's denial to the husband of matrimonial intercourse is not, of itself, ground for divorce." *Ib.* citing *Steele v. Steele*, 1 McArthur 505. One unjustifiably deserted need not seek a reconciliation. *Ib.*

As to connivance, see *Bateman v. Bateman*, 42 App. D. C. 230 (1914) ; 42 W. L. R. 324.

Concealing pregnancy at time of marriage as fraud, see *Lenoir v. Lenoir*, 24 App. D. C. 160 (1904) ; 32 W. L. R. 456. See also *Alexander v. Alexander*, 36 App. D. C. 78 (1910) ; 38 W. L. R. 814.

The phrase "legal separation from bed and board, is a synonymous term with divorce a mensa et thoro. *Maschaur v. Maschaur*, 23 App. D. C. 87 (1904); 32 W. L. R. 66. As to distinctions between a separation from bed and board and divorce a vinculo see *ib.* While statute does not declare length of time drunkenness, cruelty, or desertion must continue, "there is no difficulty in arriving at the legal definition of the terms employed." *Ib.* As to drunkenness as a cause for divorce prior to adoption of code, see *Acker v. Acker*, 22 App. D. C. 353 (1903); 31 W. L. R. 509.

Suit to annul marriage of lunatic may be filed by next friend, and need not be filed by his committee, altho in such case the committee should be made a defendant. *Mackey v. Peters*, 22 App. D. C. 341 (1903), 31 W. L. R. 504.

SEC. 967. FOREGOING SECTION NOT RETROACTIVE.—The provisions of this Act shall not invalidate any marriage heretofore solemnized according to law, or affect the validity of any decree or judgement of divorce heretofore pronounced.

SEC. 968. IN SUITS FOR DIVORCE A VINCULO DIVORCE A MENSA ET THORO MAY BE DECREED.—Where a divorce from the bond of marriage is prayed for the court shall have authority to decree a divorce from bed and board if the causes proved be sufficient to entitle the party to such relief only.

Yates v. Yates, 36 App. D. C. 518 (1911); 39 W. L. R. 538.

SEC. 969. REVOCATION OF DIVORCE A MENSA ET THORO.—In all cases where a divorce from bed and board is decreed it may at any time thereafter be revoked by the court upon the joint application of the parties to be discharged from the operation of the decree.

SEC. 970. CAUSES ARISING AFTER DIVORCE A MENSA ET THORO.—Where a divorce from bed and board has been decreed the court may afterwards decree an absolute divorce between the parties for any cause arising since the first decree and sufficient to entitle the complaining party to such decree.

R. S. D. C., sec. 749; Comp. Stat. D. C., p. 277., sec. 45.

SEC. 971. ONLY RESIDENTS DIVORCED.—No decree of nullity of marriage or divorce shall be rendered in favor of anyone not a resident of the District of Columbia, and no divorce shall be decreed in favor of any person who has not been a bona fide resident of said District for at least three years next before the application therefor for any cause which shall have occurred out of said District and prior to residence therein.

One who was married in the District of Columbia and resided there for 14 years does not lose such residence by temporarily residing in another state, without intending to abandon the domicile here. *Stewart v. Stewart*, 52 App. D. C. 323 (1923); 51 W. L. R. 162.

Where offense was committed beyond the District of Columbia plaintiff must affirmatively aver in the bill, and prove as a fact at the trial, a bona fide residence here for a period of three years; and such averment and proof is jurisdictional. *Winston v. Winston*, 50 App. D. C. 321 (1921); 49 W. L. R. 210. The voluntary appearance of the defendant in such cases does not confer jurisdiction. *Ib.*

Where the parties are residents of the District and sue for a divorce for acts committed therein it is not error to introduce evidence showing acts of cruelty commenced in another jurisdiction and culminating in this District. *Creel v. Creel*, 43 App. D. C. 82 (1915); 43 W. L. R. 53. "The statute in no way changes the rules of evidence, but is designed primarily to prevent this jurisdiction from becoming a haven for those seeking divorce." *Ib.*

Residence for purpose of divorce must be in good faith. *Downs v. Downs*, 23 App. D. C. 381 (1904); 32 W. L. R. 228. As to what constitutes residence see *ib.*

See *Blandy v. Blandy*, 20 App. D. C. 535 (1902); 30 W. L. R. 808, decided under sections 738-740, R. S. D. C.

SEC. 972. **ISSUE OF A MARRIAGE ANNULLED.**—In case any marriage shall be declared by decree to have been void on account of either party having a former wife or husband living, if it shall appear that said marriage was contracted in good faith by the other party and in ignorance of said obstacle to the marriage, that fact shall be found and declared by the decree, and in such case the issue of said marriage shall be deemed to be the legitimate issue of the parent who was capable of contracting.

R. S. D. C., sec. 741, 742; Comp. Stat. D. C., p. 276, secs. 37, 38.

SEC. 973. **ISSUE OF A LUNATIC'S MARRIAGE.**—Where a marriage is declared null and void on account of the idiocy or lunacy of either party at the time of the marriage the issue of the marriage shall be deemed legitimate.

R. S. D. C., sec. 743; Comp. Stat. D. C., p. 276, sec. 39.

SEC. 974. **LEGITIMACY OF ISSUE OF A MARRIAGE DISSOLVED.**—A divorce for any of the causes herein provided for shall not affect the legitimacy of the issue of the marriage dissolved by such divorce, but the legitimacy of such issue, if questioned, shall be tried and determined according to the course of the common law.

SEC. 975. **ALIMONY PENDENTE LITE.**—During the pendency of a suit for divorce, or a suit by the husband to declare the marriage null and void, where the nullity is denied by the wife, the court shall have power to require the husband to pay alimony to the wife for the maintenance of herself and their minor children committed to her care, and suit money, including counsel fees, to enable her to conduct her case, whether she be plaintiff or defendant, and to enforce obedience to any order in regard thereto by attachment and imprisonment for disobedience. The court may also enjoin any disposition of the husband's property to avoid the collection of said allowances, and may, in case of the husband's failure or refusal to pay such alimony and suit money, sequester his property and apply the income thereof to such objects. The court may also determine *who* shall have the care and custody of infant children pending the proceedings.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 537).

R. S. D. C., secs. 746, 747; Comp. Stat. D. C., p. 277, secs. 42, 43.

As to allowance of attorney fee to husband, see *Eichelberger v. Symon*, 53 App. D. C. 116 (1923); 50 W. L. R. 445.

As to sequestration, see *Thompson v. Tanner*, 53 App. D. C. 3 (1923); 51 W. L. R. 230. *Stewart v. Stewart*, 52 App. D. C. 323 (1923); 50 W. L. R. 162, holding that there can be no sequestration until husband is in default.

"Without regard to whether or not the wife succeeds in her litigation, we think that under section 975 of the code she is entitled to reasonable attorney's fees for services rendered in prosecuting her case and to costs of the suit." *Towson v. Towson*, 49 App. D. C. 45 (1919).

"The granting of alimony pendente lite is a matter within the sound discretion of the trial court." *Jacobi v. Jacobi*, 45 App. D. C. 442 (1916); 44 W. L. R. 728. *Dunnington v. Dunnington*, 45 App. D. C. 277 (1916); 44 W. L. R. 342. Court may award alimony pendente lite without passing on merits of litigation. *Sparks v. Sparks*, 25 App. D. C. 356 (1905); 33 W. L. R. 344. See also *Lesh v. Lesh*, 21 App. D. C. 475 (1903); 31 W. L. R. 288.

Decree awarding alimony pendente lite is a final order, and husband is liable therefor although he finally prevails. *Lynham v. Hufty*, 44 App. D. C. 589 (1916); 44 W. L. R. 229. "In a divorce proceeding the husband is primarily liable for the costs." *Ib.*

As to custody of children, see *Snow v. Snow*, 52 App. D. C. 39 (1922); 50 W. L. R. 358. *Church v. Church*, 50 App. D. C. 237 (1921); 49 W. L. R. 66.

Seeley v. Seeley, 30 App. D. C. 191 (1907) ; 36 W. L. R. 4. *Stickel v. Stickel*, 18 App. D. C. 149 (1901) ; 29 W. L. R. 563. *Wells v. Wells*, 11 App. D. C. 392 (1898) ; 26 W. L. R. 71. *Elkins v. Elkins*, 52 W. L. R. (Ct. App.) 562 (1924), and cases cited. *Slack v. Perrine*, 9 App. D. C. 128 (1896) ; 24 W. L. R. 374 (164 U. S. 454) ; *Early v. Early*, 49 App. D. C. 123 (1919) ; see also sec. 1150.

SEC. 976. PERMANENT ALIMONY.—When a divorce is granted to the wife, the court shall have authority to decree her permanent alimony sufficient for her support and that of any minor children whom the court may assign to her care, and to secure and enforce the payment of said alimony in the manner before mentioned, and may, if it shall seem fit, retain to the wife her right of dower in the husband's estate.

R. S. D. C., sec. 745 ; Comp. Stat. D. C., p. 277, sec. 41.

"Sections 876, 977, and 978 of the code provide for the decreeing of permanent alimony in cases of divorce, but these statutes have no reference to actions for the annulment of marriage. We are of the opinion that, under these provisions of the code, the court below was limited in its jurisdiction in the present proceeding (annulment) to the granting of alimony pendente lite." *Alexander v. Alexander*, 36 App. D. C. 78 (1910) ; 38 W. L. R. 814.

See also *Tolman v. Tolman*, 1 App. D. C. 299 (1893) ; 21 W. L. R. 771.

SEC. 977. If the divorce is granted on the application of the husband, the court may, nevertheless, require him to pay alimony to the wife, if it shall seem just and proper.

See annotations to section 976.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 537).

SEC. 978. After a decree of divorce in any case granting alimony and providing for the care and custody of children, the case shall still be considered open for any future orders in those respects.

See annotations to section 976.

SEC. 979. MAIDEN NAME OF WIFE RESTORED.—In granting a divorce from the bond of marriage the court may restore to the wife her maiden or other previous name.

R. S. D. C. sec. 748 ; Comp. Stat. D. C., p. 277, sec. 44.

SEC. 980. MAINTENANCE OF WIFE.—Whenever any husband shall fail or refuse to maintain his wife and minor children, if any, although able so to do, the court, on application of the wife, may decree that he shall pay her, periodically, such sums as would be allowed to her as permanent alimony in case of divorce for the maintenance of herself and the minor children committed to her care by the court, and the payment thereof may be enforced in the same manner as directed in regard to such permanent alimony.

See act of March 23, 1906, post p. 506, making it a misdemeanor to abandon or wilfully neglect to provide for the support and maintenance of wife and children.

Reed v. Reed, 52 App. D. C. 35 (1922) ; 50 W. L. R. 389.

Wife suing for limited divorce and failing to establish any dereliction on the part of the husband is not entitled to maintenance under section 980. *Towson v. Towson*, 49 App. D. C. 45 (1919). Under the statute "the power of the court to grant separate maintenance can be exercised only where the 'husband shall fail or refuse to maintain his wife and minor children,' if any, although able so to do." *Ib.*, citing *Tolman v. Tolman*, 1 App. D. C. 299 (1893) ; 21 W. L. R. 771.

Equity has jurisdiction to grant maintenance as an independent relief. *Rhodes v. Rhodes*, 36 App. D. C. 261 (1911) ; 39 W. L. R. 374, following *Tolman v. Tolman*, supra. See also *Lesh v. Lesh*, 21 App. D. C. 475 (1903) ; 31 W. L. R. 288, holding such jurisdiction not superseded by section 980.

"The amount and the continuation of the allowance will remain subject to the control of the equity court," and should the parties be reconciled or should the husband provide a suitable home and invite the wife to occupy it, the order for maintenance will be discharged. *Bernsdorff v. Bernsdorff*, 26 App. D. C. 520 (1906); 34 W. L. R. 564, distinguished in *Marschalk v. Marschalk*, 45 App. D. C. 455 (1916).

Where a bill for maintenance makes out a *prima facie* case, the complainant is entitled to an allowance *pendente lite* for support, the amount of which is within the sound discretion of the trial court. *Tolman v. Tolman*, 1 App. D. C. 299 (1893); 21 W. L. R. 771. A suit for maintenance may be maintained by a nonresident wife against a resident husband. *Ib.*

SEC. 981. SUIT TO DECLARE A MARRIAGE VALID.—When the validity of any alleged marriage shall be denied by either of the parties thereto the other party may institute a suit for affirming the marriage, and upon due proof of the validity thereof it shall be decreed to be valid, and such decree shall be conclusive upon all parties concerned.

SEC. 982. COURT TO ASSIGN ATTORNEY IN UNCONTESTED CASES.—In all uncontested divorce cases, and in any other divorce case where the court may deem it necessary or proper, a disinterested attorney shall be assigned by the court to enter his appearance for the defendant and actively defend the cause, and such attorney shall receive such compensation for his services as the court may determine to be proper, such compensation to be paid by the parties as the court may direct.

Referred to but not construed in *Lenoir v. Lenoir*, 24 App. D. C. 160 (1904); 32 W. L. R. 456.

SEC. 983. CO-RESPONDENTS.—In all divorce cases where adultery is charged the person or persons with whom the adultery is charged to have been committed shall be made defendant or defendants and brought in by personal service of process or by publication as in other cases.

"Where the corespondent is available, or can be identified and located with reasonable certainty, the statute requires that he be made a party defendant and summoned as such." *McLarren v. McLarren*, 45 App. D. C. 237 (1916); 44 W. L. R. 360. It is not necessary to make him a party if his identity cannot be determined or he is known only by a fictitious name. *Ib.*

Quaere: Whether corespondent can plead condonation by plaintiff. *Holden v. Matteson*, 38 App. D. C. 128 (1912); 40 W. L. R. 40.

Counsel fees of husband plaintiff cannot be assessed against the corespondent as costs. *Eichelberger v. Symons*, 53 App. D. C. 116 (1922); 51 W. L. R. 443.

SEC. 983a. WHEN DECREE FOR ANNULMENT OR ABSOLUTE DIVORCE EFFECTIVE.—No final decree annulling or dissolving a marriage shall be entered until after the expiration of ninety days after the entry of an interlocutory order adjudging that a case for annulment or dissolution has been proved, and every such interlocutory order shall expressly state that no annulment or divorce is awarded by it. After the expiration of such period of ninety days a final decree shall be entered by the court, provided it is applied for within thirty days, but it shall not be effective to annul or dissolve the marriage until the expiration of the time allowed for taking an appeal, nor until the final disposition of any appeal taken, and every such final decree shall expressly so recite.

Interpolated by Act approved April 19, 1920 (41 Stat. L., pt. 1, p. 567).

CHAPTER TWENTY-THREE

EJECTMENT

SEC. 984. PARTIES.—Every action of ejectment shall be brought in the name of the real claimant and may be brought against the person actually occupying the premises claimed, either in person or by tenant, *or against both the claimant and his tenant, or other occupant claiming under him*, or, if they be not actually occupied, against some person exercising acts of ownership thereon adversely to the plaintiff. If a lessee be made a defendant at the suit of a party claiming against the title of his landlord such landlord may appear and be made a party defendant in the place of his lessee. And any person claiming to be in possession may, on motion, be admitted to defend the action.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 537).

See section 988.

Where defendant pleads the general issue, and was found in possession of the land demanded, his plea must be construed as making defense for the whole. *Coal Co. v. U. S.*, 49 App. D. C. 235 (1920); 48 W. L. R. 346.

"Where in ejectment a party in possession has been ejected from the premises under a judgment found upon appeal or writ of error to be erroneous, the party so dispossessed is entitled to restitution of the premises." *Wilson v. Newburgh*, 42 App. D. C. 407 (1914); 42 W. L. R. 741. And the court is without jurisdiction to permit the plaintiff to retain possession under such reversed judgment, conditioned upon paying the original occupant a monthly rental pending further litigation. *Ib.*

One in peaceable possession of property, either in person or by tenant, is presumed to be in lawful possession, and "he was entitled to recover possession from a mere trespasser without further proof of title." *Nash v. Rawlett*, 41 App. D. C. 456 (1914); 42 W. L. R. 133. See also *Railway Co. v. Railway Co.*, 23 App. D. C. 587 (1904); 32 W. L. R. 309, affirmed in 199 U. S. 247; *Bradshaw v. Ashley*, 180 U. S. 59, affirming 14 App. D. C. 485. *Robinson v. Hillman*, 36 App. D. C. 576 (1911); 39 W. L. R. 275.

It seems to be unnecessary to plead the statute of limitations where the general issue has been pleaded in actions of ejectment. *McMillan v. Fuller*, 41 App. D. C. 384 (1914); 42 W. L. R. 51.

As to tax deeds, see *Rowlett v. Nash*, 38 App. D. C. 598 (1912); 40 W. L. R. 309. As to marshal's deed under execution, see *ib.*

The doctrine as to the inconclusiveness of judgments of ejectment has been abrogated by section 1002 of the code. *Lyon v. Bursey*, 36 App. D. C. 235 (1911); 39 W. L. R. 54. As to estoppel to claim title, see *ib.*

For proceeding enjoining prosecution of action of ejectment, see *Camp v. Boyd*, 35 App. D. C. 159 (1910); 37 W. L. R. 14, affirmed in 229 U. S. 530. As to meaning of term "ground rents" see *ib.*

Welch v. Lynch, 30 App. D. C. 122 (1907); 35 W. L. R. 398.

Howard v. Evans, 24 App. D. C. 127 (1904); 32 W. L. R. 407.

For exceptions to the rule that plaintiff in ejectment must recover on strength of his own title, see *Chesapeake Beach Railway Co. v. Washington, etc., Railroad Co.*, 23 App. D. C. 587 (1904); 32 W. L. R. 309, *supra*. British statutes prohibiting conveyance of lands held adversely are obsolete in this District. *Ib.*

Wilkes v. Wilkes, 18 App. D. C. 90 (1901); 29 W. L. R. 261.

Reid v. Anderson, 13 App. D. C. 30 (1898); 26 W. L. R. 387.

Staffan v. Zeust, 10 App. D. C. 260 (1897); 25 W. L. R. 188.

SEC. 985. FORM OF DECLARATION.—The plaintiff in his declaration must describe the premises claimed with reasonable certainty, and set forth distinctly the nature and quantity of the estate claimed by him in the same, and it shall be sufficient for him to state in addition thereto that the plaintiff was possessed of the premises, and while he was so possessed the defendant entered wrongfully into possession of the same and withholds the possession thereof from the plaintiff, or wrongfully detains such possession, or that the defendant is wrongfully exercising acts of ownership thereon. Such acts of ownership, however, unaccompanied with possession shall not, except as herein-after provided, be held to amount to an adversary possession, so as to make it necessary for the plaintiff to sue in order to avoid the bar of the statute of limitations.

SEC. 986. COUNTS.—The declaration may contain several counts and several parties may be named as plaintiffs, jointly in one count and separately in others.

[SEC. 987. PLEADING.—The defendant may demur or may plead the general issue of "not guilty," which shall put in issue the plaintiff's title and right to the possession and under which all matters of defense may be given in evidence.]

Repealed by act of June 30, 1902 (32 Stat. L. pt. 1, p. 537).

SEC. 988. EVIDENCE.—It shall be sufficient to entitle the plaintiff to a verdict to show that he is entitled, as against the defendant, to the immediate possession of the premises claimed and that the defendant is in possession thereof, holding adversely to the plaintiff, or is exercising acts of ownership over the same adversely to the plaintiff; except that in an action by one or more joint tenants or tenants in common against their cotenants, the plaintiffs shall be required to prove an actual ouster or some other act amounting to a denial of the plaintiff's title and his exclusion from the enjoyment of the property.

See annotations to section 984.

"One tenant in common is not liable to his cotenant for use and occupation, unless there has been an actual ouster of the cotenant, or acts amounting to that." *Lyon v. Bursey*, 42 App. D. C. 519 (1914); 42 W. L. R. 819. "Ouster will not be presumed, but there must be a showing of positive acts of hostility." *Ib.*

Bursey v. Lyon, 32 App. D. C. 231 (1908); 37 W. L. R. 26.

Bursey v. Lyon, 30 App. D. C. 597 (1908); 36 W. L. R. 182, holding that where plaintiff and defendant do not claim through common source of title, plaintiff must "show a complete chain of title from the sovereign, either the English crown, the State of Maryland, or the United States," particularly when neither plaintiff nor those under whom he claims was ever in possession of the property. See also *Scott v. Herrell*, 27 App. D. C. 395 (1906); 34 W. L. R. 401. *Anderson v. Reid*, 10 App. D. C. 426; 25 W. L. R. 174. *Robinson v. Hillman*, 36 App. D. C. 576 (1911); 39 W. L. R. 275.

Ford v. Ford, 27 App. D. C. 401 (1906); 34 W. L. R. 435.

Young v. Norris Peters Co., 27 App. D. C. 140 (1906); 34 W. L. R. 240.

Briel v. Jordan, 27 App. D. C. 202 (1906); 34 W. L. R. 341.

Crandall v. Lynch, 20 App. D. C. 73 (1902); 30 W. L. R. 326.

Mackall v. Mitchell, 18 App. D. C. 58 (1901); 29 W. L. R. 244.

Posey v. Hanson, 10 App. D. C. 496 (1897); 25 W. L. R. 299.

Barbour v. Moore, 10 App. D. C. 30 (1897); 25 W. L. R. 55.

Holtzman v. Douglass, 163 U. S. 278, affirming 5 App. D. C. 397; 23 W. L. R. 146.

SEC. 989. OUTSTANDING LEGAL TITLE.—It shall be no bar to the plaintiff's recovery that the legal title to the property claimed is out-

standing in another as mortgagee or trustee under a mortgage or deed of trust to secure a debt unless such mortgagee or trustee, or those claiming under him, has taken possession of the premises; or unless the defendant claims under such mortgagor or grantor in the deed of trust.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 537), repealing 31 Stat. L. p. 537. *Smith v. Sullivan*, 20 App. D. C. 553 (1902); 31 W. L. R. 2, distinguishing *Wilkes v. Wilkes*, 18 App. D. C. 90; 29 W. L. R. 261. *Reeves v. Low*, 8 App. D. C. 105 (1896); 24 W. L. R. 113.

SEC. 990. Where real property has been sold under a written contract executed by the vendor, and there has been such a performance of its terms by the vendee as would entitle him to a decree in equity for a conveyance of the legal title, without condition, such vendor shall not be entitled at law, any more than in equity, to recover said property from the vendee.

[SEC. 991. MORTGAGOR.—Wherever, by the terms of a mortgage or deed of trust, the debtor is entitled to retain possession of the property conveyed until default in the payment of the debt secured, said mortgage or deed of trust shall be no bar to the recovery of possession of the property in ejectment, before such default, by the mortgagor or grantor, against either the mortgagee or trustee or a stranger.]

Repealed by act of June 30, 1902 (32 Stat. L. pt. 1, p. 537).

SEC. 992. SEVERAL JUDGMENTS AGAINST DEFENDANTS.—If it appears on the trial that some of the defendants occupy distinct parcels of the property claimed, in severalty, the plaintiff, if entitled to recover, may, *in the discretion of the court* have several judgments against the respective parties, according to the proof of occupancy.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 537).

SEC. 993. RECOVERY OF LESS THAN IS CLAIMED.—The plaintiff, under a claim to certain described premises, may recover less than the whole property claimed, and, under a claim to an entire property, may recover an undivided part thereof.

Robinson v. Hillman, 36 App. D. C. 576 (1911); 39 W. L. R. 275, holding that where plaintiff claims only a portion of the land sued for, he may, under this section, disclaim as to the other part.

SEC. 994. JOINT TENANTS AND TENANTS IN COMMON.—Joint tenants must sue jointly in ejectment, but tenants in common may sue either jointly or separately, and any numbers of tenants in common, less than the whole number entitled, may sue jointly in reference to their undivided interests.

SEC. 995. MESNE PROFITS AND DAMAGES.—The plaintiff may embody in his declaration, in a separate count, a claim for the mesne profits received by the defendant from the property sued for or for the clear value of the use and occupation thereof extending to the time of the verdict, and also damages for waste or injury to the premises during said period; and if the jury find for the plaintiff they may, at the same time, find and assess the said mesne profits, or the value of said use and occupation and the amount of said damages; and, besides a judgment for the recovery of the property, there shall be rendered a judgment against the defendant for the amount so found by the jury, except in the case provided for in section ten hundred and three hereafter.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 537), repealing 31 Stat. L. p. 1189.

SEC. 996. LANDLORD AND TENANT.—If the action be by a landlord against his tenant, the plaintiff may embody in his declaration, in separate counts, a claim for furniture if leased with the realty, for arrears of rent due at the termination of the tenancy, a claim for double rent in cases authorized by this code from the termination of the tenancy to the verdict for possession, and a claim for damages for waste or injury to the premises or furniture during the defendant's occupancy of the same and before the commencement of the suit; and if the jury find for the plaintiff, they may at the same time find the amounts due for arrears of rent and for double rent and for damages as aforesaid, and judgment shall be rendered accordingly.

See sections 1169, 1225.

SEC. 997. PLAINTIFF MAY SUE SEPARATELY FOR RENT OR DAMAGES.—The plaintiff in ejectment shall not be bound to join his claim for rent or damages with his claim for the recovery of the land, and his omission to do so shall not prevent him from suing for the same separately.

SEC. 998. EXPIRATION OF TITLE PENDING SUIT.—If the title of the plaintiff in ejectment shall expire after the commencement of the suit but before the trial, and but for said expiration he would have been entitled to recover, the verdict shall find such facts, and the plaintiff shall be entitled to recover his damages sustained by the wrongful withholding of the possession.

SEC. 999. ADVERSE POSSESSION.—In an action to recover vacant and unimproved lots of ground it shall not be necessary, in order to maintain the defense of adversary possession, to show that the premises in controversy had been inclosed; but if it appear that the property had been assessed for taxation to the defendant, or those under whom he claims, and that he or they had regularly paid the taxes on the same and were the only persons who had exercised control over the same for a period of fifteen years before the bringing of the action, such facts shall be the equivalent of possession by actual inclosure.

See sections 111, 513.

As to occupancy by mistake of more land than called for in deed as constituting adverse possession, see *Rudolph v. Peters*, 35 App. D. C. 438 (1910); 38 W. L. R. 630, citing with approval *Johnson v. Thomas*, 23 App. D. C. 150. *Quaere*: Whether one may acquire title by adverse possession of a portion of a public highway outside of the boundary of the city of Washington. *Ib.* When title is secured by adverse possession an attempted dedication by the record owner is ineffectual to vest title in the District of Columbia. *Ib.*

"The evidence on behalf of the defendant made out a clear case of actual, exclusive, continuous, open, and adverse possession of the premises for more than 20 years by her and those under whom she claimed, and had the effect to create in her a good and sufficient title." *Briel v. Jordan*, 27 App. D. C. 202 (1906); 34 W. L. R. 341.

Chesapeake, etc., Railway Co. v. Washington, etc., Railroad Co., 23 App. D. C. 587 (1904); 32 W. L. R. 309; affirmed, 199 U. S. 247.

Mackall v. Mitchell, 18 App. D. C. 58 (1901); 29 W. L. R. 244.

Bradshaw v. Ashley, 14 App. D. C. 485 (1899); 27 W. L. R. 246, affirmed in 180 U. S. 59, holding that one in adverse possession for less than statutory period, and who has never voluntarily relinquished possession, may recover as against a subsequent trespasser. See also *Staffan v. Zeust*, 10 App. D. C. 260; 25 W. L. R. 188.

Reeves v. Low, 8 App. D. C. 105 (1896); 24 W. L. R. 113.

Holtzman v. Douglas, 168 U. S. 278 (1897), affirming 5 App. D. C. 397; 23 W. L. R. 146.

SEC. 1000. VERDICT.—If the plaintiff's title be established by proof, the verdict of the jury shall be generally for the plaintiff as to the whole or part of the property *or interest* claimed in the declaration, as the case may be; if, on the contrary, the plaintiff fail to make satisfactory proof of title, the verdict shall be for the defendant as to the whole or part of the property, as the case may be, and it may be for the plaintiff as to part and for the defendant as to other part thereof, and judgment shall be rendered according to the verdict, except as hereinafter provided.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 538). Under this section, plaintiff may recover a less portion than the whole sued for. *Robinson v. Hillman*, 36 App. D. C. 576 (1911); 39 W. L. R. 275.

SEC. 1001. If it appear on the trial that the defendant did not wrongfully enter into possession of the property sued for, or exercise acts of ownership over the same adversely to the plaintiff, as aforesaid, the verdict of the jury shall be that the defendant is not guilty, and thereupon judgment shall be rendered in favor of the defendant against the plaintiff for the costs of the action, but such judgment shall not be a bar to a future action by the plaintiff against the defendant for the recovery of the property.

SEC. 1002. JUDGMENT.—Any final judgment rendered in an action of ejectment shall be conclusive as to the title thereby established as between the parties to the action and all persons claiming under them since the commencement of the action.

"The doctrine of the common law as to the inconclusiveness of judgments of ejectment has been abrogated in this District" by code sections 984 and 1002. *Lyon v. Bursey*, 36 App. D. C. 235 (1911); 39 W. L. R. 54.

SEC. 1003. IMPROVEMENTS.—If at any time before the trial the defendant shall give notice that if the verdict of the jury shall be in favor of the plaintiff's title the defendant will claim the benefit of permanent improvements that may have been placed on the property by the defendant or those under whom he claims, and shall offer evidence at the trial tending to show that he or those under whom he claims had peaceably entered into possession of the premises in controversy under a title which he or they had reason to believe and did believe to be good, and had erected valuable and permanent improvements on said property, which were begun in good faith before the commencement of the suit, the jury shall be directed, in case they find in favor of the plaintiff's title and also find that such permanent improvements were made by the defendant, or those under whom he claims, under the circumstances aforesaid, to assess—

First. The damages of the plaintiff, being the clear value over and above taxes and necessary expenses of the use and occupation of the property, exclusive of said improvements, during the whole period of the occupation of the same to the date of the verdict, and also any damage done to the property, by waste or otherwise, by said parties during said occupation.

Second. The present value of any permanent improvements which may have been placed on the premises by the defendant or those under whom he claims.

Third. The present value of the property of the plaintiff without and exclusive of said improvements.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 538), repealing 31 Stat. L., pt. 1, p. 1189.

See sections 1005, 1010.

Section 1003 "is limited to those who enter into possession of the premises under a title which they had reason to believe, and did believe, to be good," and erect valuable and permanent improvements in good faith." *Robinson v. Hillman*, 36 App. D. C. 576 (1911) ; 39 W. L. R. 275. See also *Armstrong v. Ashley*, 22 App. D. C. 368 (1903) ; 31 W. L. R. 439, holding that grantee of an occupant in good faith can have no better right than his grantor had to an equitable lien for improvements, citing *Anderson v. Reid*, 14 App. D. C. 54, and stating that the rule therein announced "has now, at least to some extent, been modified by the code in section 1003."

SEC. 1004. If either party shall feel aggrieved by said assessment he may, within four days after the verdict, move to set the assessment aside, and the court may, for good cause shown, set the same aside and order another jury to be empaneled in the cause to make a new assessment.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 538), repealing 31 Stat. L., pt. 1, p. 1189.

SEC. 1005. If the damages of the plaintiff, assessed as aforesaid, shall exceed the value of said permanent improvements as ascertained by the jury, the plaintiff shall be entitled to a judgment for the excess in like manner as directed in section nine hundred and ninety-five aforesaid.

SEC. 1006. If the value of said improvements, so ascertained, shall equal but not exceed the plaintiff's damages, as found by the jury, the plaintiff shall only be entitled to judgment for the recovery of the property sued for and costs.

SEC. 1007. ELECTION OF PLAINTIFF.—If the value of said improvements shall be found by the jury to exceed the damages of the plaintiff, the plaintiff may elect either to pay to the defendant the amount of said excess or to demand of the defendant the value of the plaintiff's property, without the improvements, as fixed by the jury, and tender to the defendant a deed for said property, with all the plaintiff's right, title, and interest in the same.

SEC. 1008. PAYMENT FOR IMPROVEMENTS.—If the said plaintiff shall pay to the defendant, within the time fixed therefor by the court, or, in case of his refusal to accept the same, shall pay into court for his use the amount of such excess of the value of said improvements over the damages of the plaintiff, the plaintiff shall be entitled forthwith to a judgment and writ of possession.

SEC. 1009. TENDER OF DEED BY PLAINTIFF.—If the plaintiff shall tender a deed as aforesaid to the defendant and demand the value of his property without the said improvements, as found by the jury, and the defendant shall fail or refuse to pay the same within the time fixed therefor by the court, the plaintiff shall, in like manner, be entitled to a judgment and writ of possession; and in case the plaintiff shall be a minor, the court may authorize said deed to be executed by his guardian.

SEC. 1010. JUDGMENT FOR DEFENDANT.—If the plaintiff shall fail or refuse either to pay the defendant the excess of the value of the improvements over the amount of the plaintiff's damages, or to

tender a deed to the defendant, as aforesaid, and accept from him the value of the plaintiff's property, exclusive of the improvements, as aforesaid, the defendant may pay said value into court for the use of the plaintiff, and thereupon the defendant shall be entitled to a judgment in his favor, but without costs, which judgment shall be a bar to any future action by the plaintiff against the defendant to recover said property for cause theretofore existing.

CHAPTER TWENTY-FOUR

SUBCHAPTER ONE

ESTATES

SEC. 1011. WHAT ESTATES IN DISTRICT.—Estates in land in the District shall be estates of inheritance, estates for life, estates for years, estates at will, and estates by sufferance.

SEC. 1012. FREE SIMPLE ESTATES.—All estates of inheritance, including such as were formerly estates tail, shall be adjudged estates in fee simple.

See sections 502-504.

Act of Maryland of 1786, ch. 45, sec. 2, Comp. Stat. D. C. p. 192, sec. 1.

Devise held to convey fee. *Atkins v. Best*, 27 App. D. C. 148 (1906) ; 34 W. L. R. 292. *Young v. Norris Peters Co.*, 27 App. D. C. 140 (1906) ; 34 W. L. R. 240.

Devise held to create estate tail, and, therefore, under Maryland act of 1786 (*supra*) converted into fee simple. *Dengel v. Brown*, 1 App. D. C. 423 (1893) ; 21 W. L. R. 741.

SEC. 1013. An estate in fee simple may be either absolute or qualified, as to one and his heirs during an existing condition of things of uncertain duration.

SEC. 1014. FREEHOLDS.—Estates of inheritance and estates for life shall continue to be denominated freeholds, and estates for years shall be chattels real; estates at will or by sufferance shall be chattel interests, but shall not be liable, as such, to sale under execution; and all estates may be subject to conditions precedent or subsequent.

See section 1082.

SEC. 1015. ESTATES PUR AUTRE VIE.—An estate for the life of a third person, whether limited to heirs or otherwise, shall be deemed a freehold only during the life of the grantee or devisee, but after his death it shall be deemed a chattel real and be a part of his personal estate.

SEC. 1016. ESTATES CLASSIFIED.—Estates are either in possession or in expectancy.

SEC. 1017. An estate in possession exists when the owner has an immediate right to the possession of the land.

SEC. 1018. An estate in expectancy is either a reversion or a future estate.

SEC. 1019. REVERSIONS.—A reversion is the residue of an estate left in the grantor who has conveyed, or in the heirs of the devisor who has devised a particular estate less than his own, and which residue returns to his or their possession on the expiration of the particular estate.

Camp v. Boyd, 35 App. D. C. 159 (annotated under sec. 984).

SEC. 1020. FUTURE ESTATES.—A future estate is one limited to commence at a future day, either without the intervention of a precedent

estate or after the expiration or determination of a precedent estate created at the same time and by the same conveyance or devise.

SEC. 1021. If it is to commence upon the full expiration of such precedent estate, it is a remainder and may be transferred by that name. If it is to commence on a contingency which, if it happen, will abridge or determine such precedent estate before its expiration, it shall be known as a conditional limitation.

Hayes v. Huddleston, 40 App. D. C. 183 (1913); 41 W. L. R. 274.

SEC. 1022. VESTED AND CONTINGENT FUTURE ESTATES.—A future estate is vested when there is a person in being who would have an immediate right to the possession of the land upon the expiration of the intermediate or precedent estate, or upon the arrival of a certain period or event when it is to commence in possession. It is contingent when the person to whom or the event upon which it is limited to take effect in possession or become a vested estate is uncertain.

Distinction between vested and contingent remainder, Green v. Gordon, 38 App. D. C. 443 (1912); 40 W. L. R. 194. "The law favors the vesting of estates, and is inclined to treat conditions as subsequent rather than precedent." *Id.* Estates will be held to vest at the earliest possible moment, in absence of testamentary intent to contrary. *Id.* "Adverbs of time—as *where, there, after, from*, etc.—in a devise of a remainder are construed to relate merely to the time of the enjoyment of the estate, and not the time of the vesting in interest." *Id.* See also Breneman v. Herdman, 35 App. D. C. 27 (1910); 38 W. L. R. 314. Johnson v. Washington Loan & Trust Co., 33 App. D. C. 242 (1909); affirmed, 224 U. S. 224; 37 W. L. R. 227. Vogt v. Vogt, 26 App. D. C. 46 (1905); 33 W. L. R. 390.

Where "the absolute power of disposal was given in express and unequivocal terms, or clearly and unmistakably implied, to the first taker, the remainder over was void." Montgomery v. Brown, 25 App. D. C. 490 (1905); 33 W. L. R. 468.

Distinction between vested and contingent remainder, Fields v. Gwynn, 19 App. D. C. 99 (1901); 29 W. L. R. 834.

See also Hauptman v. Carpenter, 16 App. D. C. 524 (1900); 28 W. L. R. 567. Craig v. Rowland, 10 App. D. C. 402 (1897); 25 W. L. R. 235. Marshall v. Augusta, 5 App. D. C. 183 (1895); 23 W. L. R. 40. Richardson v. Penicks, 1 App. D. C. 261 (1893); 21 W. L. R. 707. O'Brien v. Dougherty, 1 App. D. C. 148 (1893); 21 W. L. R. 627.

SEC. 1023. PERPETUITIES.—Except in the case of gifts or devises to charitable uses, every future estate, whether of freehold or leasehold, whether by way of remainder or without a precedent estate, and whether vested or contingent, shall be void in its creation which shall suspend, or may by possibility suspend, the power of absolute alienation of the property, so that there shall be no person or persons in being by whom an absolute fee in the same, in possession, can be conveyed, for a longer period than during the continuance of not more than one or more lives in being and twenty-one years thereafter.

See section 669.

"Gifts to charitable uses do not come within the purview of the law against perpetuities." Washington Loan & Trust Co. v. Hammond, 51 App. D. C. 260 (1922); 50 W. L. R. 146. Definition of charitable trust, see *ib.*

As to validity of gift over upon alternative contingencies, one of which may occur beyond the period fixed by the rule against perpetuities, see Wills v. Maddox, 45 App. D. C. 128 (1916); 44 W. L. R. 297; certiorari denied, 242 U. S. 640.

As to validity of bequest to a foreign corporation in trust for the perpetual care of grave, see Iglehart v. Iglehart, 26 App. D. C. 209 (1905); 33 W. L. R. 711; affirmed in 204 U. S. 478.

Landram v. Jordan, 25 App. D. C. 291 (1905); 33 W. L. R. 343, affirmed in 203 U. S. 56.

Earnshaw v. Daly, 1 App. D. C. 218 (1893); 21 W. L. R. 669.

See also *Ould v. Washington Hospital*, 95 U. S. 303 (1877). *Hopkins v. Grimshaw*, 165 U. S. 342 (1897).

SEC. 1024. **CHATELS REAL.**—The provisions aforesaid as to future estates shall apply to limitations of chattels real as well as to freehold estates, so that the absolute ownership of a term for years and power to dispose of the same shall not be suspended for a longer period than the absolute power of alienation in respect to a fee simple.

SEC. 1025. **WHAT ESTATES CREATED BY DEED OR WILL.**—Subject to the provisions aforesaid, a freehold estate as well as a chattel real may be created by deed or will to commence at a future day, absolutely or conditionally; an estate for life may be created in a term for years and a remainder limited thereon; a remainder of freehold or for years, either vested or contingent, may be created expectant on the determination of a term for years, and a fee may be limited on a fee upon a contingency which must happen, if at all, within the period herein prescribed.

See section 512.

SEC. 1026. **ALTERNATIVE FUTURE ESTATES.**—Two or more future estates may be created to take effect in the alternative, so that if the first in order shall fail to vest the next in succession may be substituted for it and take effect accordingly.

SEC. 1027. **REMAINDER TO HEIRS.**—Where a remainder shall be limited to the heirs or heirs of the body of a person to whom a life estate in the same premises shall be given, the persons who, on the termination of the life estate, shall be the heirs or the heirs of the body of such tenant for life shall be entitled to take in fee simple as purchasers by virtue of the remainder so limited. X

Abolishes rule in Shelley's case.

See *Sims v. Georgetown College*, 1 App. D. C. 72 (1893); 21 W. L. R. 595. *Vogt v. Vogt*, 26 App. D. C. 46 (1905); 33 W. L. R. 390.

SEC. 1028. **POSTHUMOUS CHILDREN.**—Where a future estate shall be limited to heirs, or issue, or children, posthumous children shall be entitled to take in the same manner as if living at the death of their parent; and a future estate depending on the contingency of the death of any person without heirs, or issue, or children shall be defeated by the birth of a posthumous child of such person.

See sections 386, 953.

Act of Maryland of 1786, ch. 45, sec. 3, Comp. Stat. D. C., p. 194, sec. 2. "A child en ventre su mare is deemed to be in esse, for the purpose of taking a remainder, or any other estate or interest which is for his benefit, whether by descent, by devise, or under the statute of distribution." *Craig v. Rowland*, 10 App. D. C. 402 (1897); 25 W. L. R. 235.

SEC. 1029. **EXPECTANT ESTATES NOT TO BE DEFEATED.**—No expectant estate can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent estate, nor by any destruction of such precedent estate, by disseizin, forfeiture, surrender, merger, or otherwise, except when such destruction is expressly provided for or authorized in the creation of such expectant estate; nor shall an expectant estate thus liable to be defeated be on that ground adjudged void in its creation.

Sections 1029 and 1030 do not change the common-law rule that a widow is not entitled to dower in lands to which her husband had a remainder in fee,

if he predeceases the life tenant. *Talty v. Talty*, 40 App. D. C. 587 (1913); 41 W. L. R. 436.

SEC. 1030. EXPECTANT ESTATE ALIENABLE.—Expectant estates shall be descendible, devisable, and alienable in the same manner as estates in possession.

See annotations to sec. 1029.

SEC. 1031. TENANCIES IN COMMON AND JOINT TENANCIES.—Every estate granted or devised to two or more persons in their own right, including estates granted or devised to husband and wife, shall be a tenancy in common, unless expressly declared to be a joint tenancy; but every estate vested in executors or trustees, as such, shall be a joint tenancy, *unless otherwise expressed*.

32 Stat. L., pt. 1, p. 538.

Estates by the entireties still exist in the District of Columbia in both personalty and realty. *Flaherty v. Columbus*, 41 App. D. C. 525 (1914); 42 W. L. R. 149. See also *Marshall v. Lane*, 27 App. D. C. 276 (1906); 34 W. L. R. 290, reforming a deed to create tenancy in common instead of estate of entireties. See opinion of Hoehling, J., in *Settle v. Settle*, 52 W. L. R. 433 (1924), holding that conveyance to husband and wife "as joint tenants" creates tenancy by entireties.

Construction of conveyance to two or more persons prior to adoption of Code, see *Seitz v. Seitz*, 11 App. D. C. 358 (1897); 25 W. L. R. 729. Also *p. v. Fedarwisch*, 9 App. D. C. 403 (1896); 25 W. L. R. 22 (to husband and wife). *Carroll v. Reidy*, 5 App. D. C. 59 (1894); 22 W. L. R. 820 (to husband and wife as tenants in common). *O'Brien v. Dougherty*, 1 App. D. C. 148 (1893); 21 W. L. R. 627 (devise to a class).

SEC. 1032. ESTATES FOR YEARS.—An estate for a determined period of time is an estate for years.

SEC. 1033. ESTATES FROM YEAR TO YEAR.—An estate expressed to be from year to year shall be good for one year only.

A lease for one year, with a provision that unless the premises are vacated on the day of the expiration of the term, the lessee shall become a tenant for another year, creates a tenancy for one year only, and the tenant holding over becomes a tenant at sufferance. *Morse v. Brainerd*, 42 App. D. C. 448 (1914); 42 W. L. R. 707. See also *Soper v. Myers*, 45 App. D. C. 286 (1916); 44 W. L. R. 357.

SEC. 1034. ESTATES BY SUFFERANCE.—All estates which by construction of the courts were estates from year to year at common law, as where a tenant goes into possession and pays rent without an agreement for a term, or where a tenant for years, after the expiration of his term, continues in possession and pays rent and the like, and all verbal *hireings* by the month or at any specified rate per month, shall be deemed estates by sufferance.

32 Stat. L., pt. 1, p. 538.

See secs. 1011, 1014, 1116, 1221, et seq.

See annotation to sec. 1033; R. S. D. C. secs. 680, 681; Comp. Stat. D. C. p. 316, secs. 4, 5. *Boss v. Hagan*, 49 App. D. C. 106 (1919); 47 W. L. R. 749. *Velati v. Dante*, 39 App. D. C. 372 (1912); 41 W. L. R. 40.

SEC. 1035. ESTATES FROM MONTH TO MONTH, AND SO FORTH.—An estate may be from month to month or from quarter to quarter, or, as otherwise expressed, it may be by the month or by the quarter, if so expressed in writing.

SEC. 1036. ESTATES AT WILL.—An estate at will is one held by the joint will of lessor and lessee, and which may be terminated at any time, as herein elsewhere provided, by either party; and such estate

shall not exist or be created except by express contract: *Provided, however,* That in case of a sale of real estate under mortgage or deed of trust or execution, and a conveyance thereof to the purchaser, the grantor in such mortgage or deed of trust, execution defendant, or those in possession claiming under him, shall be held and construed to be tenants at will, except in the case of a tenant holding under an unexpired lease for years, in writing, antedating the mortgage or deed of trust.

All the provisions of this subchapter shall apply to personal property generally except where from the nature of the property they are inapplicable.

See secs. 1014, 1220.

R. S. D. C., secs. 680, 681, Comp. Stat. D. C., p. 316, secs. 4, 5. 32 Stat. L., pt. 1, p. 538.

Lessee of property sold under foreclosure proceedings becomes the tenant of the purchaser. *Bliss v. Duncan*, 44 App. D. C. 93 (1915); 43 W. L. R. 709.

SUBCHAPTER TWO

POWERS

SEC. 1037. DEFINITION.—A power is an authority to do some act in relation to lands or the creation of estates therein or of charges thereon which the owner granting or reserving such power might himself lawfully perform.

SEC. 1038. GENERAL POWER.—A power is general where it authorizes the alienation in fee, by means of a conveyance, will, or charge, of the lands embraced in the power to any alienee whatever.

SEC. 1039. SPECIAL POWER.—A power is special—

First. Where the persons or class of persons to whom the disposition of the lands under the power is to be made are designated.

Second. Where the power authorizes the alienation, by means of a conveyance, will, or charge, of a particular estate or interest less than a fee.

SEC. 1040. BENEFICIAL POWER.—A general or special power is beneficial where no person other than the grantee has, by the terms of its creation, any interest in its execution.

SEC. 1041. EFFECT OF ABSOLUTE POWER TO OWNER OF PARTICULAR ESTATE.—Where an absolute power of disposition, not accompanied by any trust, shall be given to the owner of a particular estate for life or years, such estate shall be changed into a fee, absolute in respect to the rights of creditors and purchasers but subject to any future estates limited thereon in case the power should not be executed or the lands should not be sold for the satisfaction of debts.

Kennedy v. Alexander, 21 App. D. C. 424 (1903); 31 W. L. R. 158.

Manson v. Duncanson, 166 U. S. 533, *affirming* 3 App. D. C. 260 (1894).

SEC. 1042. EFFECT OF SUCH POWER TO ONE WITHOUT PARTICULAR ESTATE.—Where a like power of disposition shall be given to any person to whom no particular estate is limited, such person shall also take a fee, subject to any future estates that may be limited thereon but absolute in respect to creditors and purchasers.

See annotations to sec. 1041.

SEC. 1043. EFFECT WHERE NO REMAINDER ON PARTICULAR ESTATE.—In all cases where such power of disposition is given and no remainder is limited on the estate of the grantee of the power, such grantee shall be entitled to an absolute fee.

SEC. 1044. CONSTRUCTION OF POWER TO PARTICULAR TENANT TO DEVISE THE INHERITANCE.—Where a general and beneficial power to devise the inheritance shall be given to a tenant for life or for years, such tenant shall be deemed to possess an absolute power of disposition, within the meaning and subject to the provisions of the three last preceding sections.

SEC. 1045. RIGHT OF GRANTOR TO RESERVE POWER.—The grantor in any conveyance may reserve to himself any power, beneficial or in trust, which he might lawfully grant to another, and every power thus reserved shall be subject to the provisions of this subchapter as if granted to another.

SEC. 1046. LIABILITY OF BENEFICIAL POWERS IN EQUITY.—Every special and beneficial power shall be liable, in equity, to the claims of creditors, and the execution of the power may be decreed for the benefit of the creditors entitled.

SEC. 1047. GENERAL POWERS IN TRUST.—A general power is in trust when any person or class of persons other than the grantee of such power is designated as entitled to the proceeds, or any portion of the proceeds or other benefits to result from the alienation of the lands, according to the power.

SEC. 1048. SPECIAL POWERS IN TRUST.—A special power is in trust—

First. When the disposition which it authorizes is limited to be made to any person or class of persons other than the grantee of such power.

Second. When any person or class of persons other than the grantee is designated as entitled to any benefit from the disposition or change authorized by the power.

SEC. 1049. TRUST POWERS IMPERATIVE.—Every trust power, unless its execution or nonexecution is made expressly to depend on the will of the grantee, is imperative and imposes a duty on the grantee the performance of which may be compelled in equity for the benefit of the parties interested.

Fitzgerald v. Wynne, 1 App. D. C. 107 (1893); 21 W. L. R. 611.

SEC. 1050. SELECTION UNDER TRUST POWERS.—A trust power does not cease to be imperative where the grantee has the right to select any and exclude others of the persons designated as the objects of the trust.

SEC. 1051. Where a disposition under a power is directed to be made to or among or between several persons, without any specifications of the share or sum to be allotted to each, all the persons designated shall be entitled to an equal proportion. But when the terms of the power import that the estate or fund is to be distributed between the persons so designated, in such manner or proportions as the trustee of the power may think proper, the trustee may allot the whole to any one or more of such persons in exclusion of the others.

SEC. 1052. EXECUTION OF TRUST POWERS FOR BENEFIT OF CREDITORS AND ASSIGNEES.—The execution in whole or in part of any trust power may be decreed in equity for the benefit of the creditors or

assignees of any person entitled to compel its execution when the interest of the objects of such trust is assignable.

SEC. 1053. MANNER OF EXECUTING POWERS.—No power can be executed except by some instrument in writing, which would be sufficient in law to pass the estate or interest intended to pass under the power if the person executing the power were the actual owner.

SEC. 1054. Where a power to dispose of lands is confined to a disposition by devise or will, the instrument of execution must be a will duly executed; and where a power is confined to a disposition by grant it can not be executed by will, although the disposition is not intended to take effect until after the death of the party executing the power.

See secs. 1629, 1633.

SEC. 1055. Every instrument executed by the grantee of a power conveying an estate or creating a charge, which such grantee would have no right to convey or create unless by virtue of his power, shall be deemed a valid execution of the power, although such power be not recited or referred to therein.

CHAPTER TWENTY-FIVE

EVIDENCE

SEC. 1056. OATH.—All evidence shall be given under oath according to the forms of the common law, except that where a witness has conscientious scruples against taking an oath, he may, in lieu thereof, solemnly, sincerely, and truly declare and affirm; and wherever herein any application, statement, or declaration is required to be supported or verified by an oath it is to be understood that such affirmation is the equivalent of an oath.

See preamble, paragraph 5.

SEC. 1057. PERJURY.—A person swearing, affirming, or declaring, or giving testimony in any form where an oath is authorized by law, is lawfully sworn, and will be guilty of perjury in a case where he would be guilty of said crime if sworn according to the forms of the common law.

See secs. 184, 652, 691, 732, 761, 858, 1291.

SEC. 1058. TESTIMONY DE BENE ESSE.—The testimony of any witness may be taken in any civil cause depending in any court of the District of Columbia, whether the cause be at issue or not, by deposition de bene esse, under any of the following conditions:

First. Where the witness lives beyond the District of Columbia.

Second. Where the witness is likely to go out of the United States or beyond the District and not return in time for the trial.

Third. Where the witness is infirm or aged, or for any other reason the party desiring his testimony fear he may not be able to secure the same at the time of trial, whether said witness resides within the District or not.

Fourth. If during the trial any witness is unable, by reason of sickness or other cause, to attend the trial, the deposition of such witness may, in the discretion of the court, be taken and read at the trial.

Any such deposition may be taken before any judge of any court of the United States; before any commissioner or clerk of any court of the United States, or any examiner in chancery of any court of the United States; before any chancellor, justice, or judge or clerk of any court of any State or Territory or other place under the sovereignty of the United States, or any notary public or justice of the peace within any place under the sovereignty of the United States: *Provided*, That no such person shall be eligible to take such deposition who is counsel or attorney for any party to the cause or who is in any wise interested in the event of the cause.

Before proceeding to take the deposition reasonable written notice of the time, place, names, and addresses of the witnesses shall be given by the party or his attorney proposing to take the deposition

to the attorney of record, if there be one, of the adverse party, and if not, to the party himself, which notice shall specify the name or names of the witnesses, the time and place of taking the same, and the name and official character of the person before whom the same is to be taken; but it shall not be lawful to require the adverse party to attend the taking of a deposition at more than one place on the same day.

In all cases in rem the person having the agency or possession of the property at the time of seizure shall be deemed the adverse party until a claim shall have been put in, when the claimant and the person having the agency or possession as aforesaid shall both be entitled to the notice.

Summons to any witness to appear and testify shall be issued by the person or officer before whom the deposition is to be taken, and served by the marshal of the United States or his deputy within the place where the witness resides; and the witness may be compelled to appear and testify by the officer before whom the deposition is to be taken in the same manner as witnesses may be compelled to appear and testify in court; and for the purpose of executing the provisions of this section any of the persons authorized to take such depositions are hereby vested with all the power and authority for compelling the attendance of the witness and the giving of his testimony which by law or usage are vested in any of the judges of the courts of the United States, and shall be entitled, upon summary application, to the aid of the courts of the United States to compel such attendance and giving of testimony.

Every person deposing as herein provided shall first swear or solemnly and truly affirm to tell the truth, the whole truth, and nothing but the truth in answer to such questions as are propounded to him by the parties or their counsel; and the adverse party or his counsel shall have the right to cross-examine such witness.

The questions propounded to the witness and the answers of the witness thereto shall be taken down in writing; and the same may be taken down stenographically by the officer taking the deposition or a competent and disinterested stenographer engaged by him, and afterwards transcribed into writing or typewriting, and, in the presence of the officer taking the deposition, read over to the witness, and signed by him. If the witness be unable to write or refuse to sign the deposition, the officer taking the same shall certify the fact and the reason, if any, assigned by the witness.

The deposition of the witness or witnesses, together with the certificate of the officer taking the same, shall be by said officer sealed up and indorsed with the title of the cause in which the deposition is taken, and the cost of taking the same and by whom paid, and by him transmitted to the court in the District of Columbia in which the cause is pending, and by him deposited, postage prepaid, in the United States mail.

If, at the time of trial, the witness can be produced to testify in open court the deposition shall not be read in evidence; but if the attendance of the witness can not be produced then the said deposition shall be admissible in evidence, subject to such objections to the questions and answers as were noted at the time of taking the depo-

sition, or within ten days after the return thereof, and would be valid were the witness personally present in court.

In any case where the interests of justice may require the supreme court of the District of Columbia may grant a *dedimus potestatem* to take depositions according to common usage, and may, according to the usages of chancery, direct depositions to be taken in *perpetuam rei memoriam* if they relate to any matters that might be cognizable in any court of the United States.

When the testimony of any witness residing in any place not within the sovereignty of the United States is desired in any cause pending in any court of the District of Columbia, the same may be taken upon interrogatories and cross-interrogatories filed in said court, and transmitted by said court under letters rogatory, addressed to some court of record in the foreign State in which said witness is then to be found.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 538), repealing 31 Stat. L., pt. 1, p. 1189.

See secs. 144, 922 et seq.

R. S. U. S., secs. 863, 865, 866; Comp. Stat. D. C. p. 213, secs. 2-4, p. 568, sec. 19.

Deposition taken in New York City, pursuant to notice, wherein witness testified that he lived in that city, is admissible without proof that witness was unavailable at time of trial. "In such a case the law presumes that the witnesses continued to live in that city and were there at the time of the trial." *Campbell v. Willis*, 53 App. D. C. 296 (1923); 51 W. L. R. 603.

As to right to read only part of a deposition, see *Bernhardt v. City and S. Ry. Co.*, 49 App. D. C. 265 (1920); 48 W. L. R. 246.

Deposition may be offered in evidence by adverse party. *New Arcade Co. v. Owens*, 49 App. D. C. 65 (1919).

Testimony of witness in foreign country must be taken on interrogatories and cross-interrogatories, under letters rogatory. *Hutchins v. Hutchins*, 41 App. D. C. 367 (1914); 42 W. L. R. 24. The code provisions relative to depositions, etc., supersede all former legislation on the subject. *Ib.*

Objections to questions and answers must be noted at the time of taking of deposition or within 10 days after the return thereof, and an objection first made when the deposition is read to the jury comes too late. *Macafee v. Higgins*, 31 App. D. C. 355 (1908); 36 W. L. R. 330. See also *Welch v. Lynch*, 30 App. D. C. 122 (1907); 35 W. L. R. 398.

General interrogatories which do not inform the opposing party of the answer that might be expected are improper, and "should be called attention to by motion to exclude or suppress the answer, in advance of the trial." *Walker v. Warner*, 31 App. D. C. 76 (1908); 36 W. L. R. 262.

See also *Mass. Mutual Accident Assoc. v. Dudley*, 15 App. D. C. 472 (1899); 28 W. L. R. 24. *Anacostia & Potomac River R. R. Co. v. Klein*, 8 App. D. C. 75 (1896); 24 W. L. R. 117.

SEC. 1059. No witness shall be required, under the provisions of the preceding section, to attend at any place out of the county where he resides, nor more than forty miles from the place of his residence, to give his deposition; nor shall any witness be deemed guilty of contempt for disobeying any subpoena directed to him by virtue of the said section, unless his fee for going to, returning from, and one day's attendance at the place of examination are paid or tendered to him at the time of the service of the subpoena.

SEC. 1060. COMMISSION TO TAKE DEPOSITIONS.—On motion made in any common law action in the District, by a party thereto, the court may order a commission to issue to such person or persons as the court may name to take the deposition of any witness residing or being out of the District *orally* or on interrogatories and cross-in-

terrogatories, to be filed and accompany such commission, as may be provided by the rules of the court, and said commission shall be executed, returned, and published according to the practice in courts of equity: *Provided*, That such depositions shall not be admitted at the trial of the action if, at the time, the witness be present in the District and his attendance can be obtained by the process of the court.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 540).

See secs. 144, 922, 923.

Hutchins v. Hutchins, 41 App. D. C. 367, annotated under sec. 1058, *supra*.

SEC. 1061. TESTIMONY IN EQUITY CAUSES.—In equity causes in the District the testimony of the witnesses may be taken in the manner provided by the rules of the Supreme Court of the United States for practice in equity, and of the supreme court of the District of Columbia not inconsistent therewith: *Provided*, The court may, in its discretion, for proper cause shown, order the testimony to be taken orally in its presence or under a commission, according to the usages of chancery, or before examiners, upon any reasonable notice as directed in the preceding section, as the court may order and direct; and according to the same usages the court may, upon application by any party interested, direct depositions to be taken in perpetuum rei memoriam, in relation to matters that may be cognizable in the court.

Newman v. Newman, 35 App. D. C. 497 (1910); 38 W. L. R. 668.

SEC. 1062. COMMISSIONS FROM COURTS OUT OF THE DISTRICT.—When a commission is issued by any court of the United States or of any State or Territory or of any place under the jurisdiction of the United States, for taking the testimony of witnesses within the District of Columbia, the same proceedings shall be had in relation thereto as are directed by sections eight hundred and sixty-eight and eight hundred and sixty-nine of the Revised Statutes of the United States.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 540), repealing 31 Stat. L., pt. 1, p. 1189.

SEC. 1063. COMPETENCY OF WITNESSES.—Except as herein elsewhere provided, no person shall be incompetent to testify in any civil action or proceeding by reason of his being a party thereto or interested in the result thereof; but, if otherwise competent to testify, he shall be competent to give evidence on his own behalf and competent and compellable to give evidence on behalf of any other party to such action or proceeding.

See secs. 1064, 1067, 1073.

R. S. D. C., sec. 876, Comp. Stat. D. C., p. 565, sec. 1. *Halback v. Hill*, 49 App. D. C. 127 (1919); 48 W. L. R. 51. *Hopkins v. Grimshaw*, 165 U. S. 342 (1897).

SEC. 1064. TESTIMONY OF SURVIVING PARTY.—If one of the original parties to a transaction or contract has, since the date thereof, died or become insane or otherwise incapable of testifying in relation thereto, the other party thereto shall not be allowed to testify as to any transaction with or declaration or admission of the said deceased or otherwise incapable party in any action between said other party or any person claiming under him and the executors, administrators, trustees, heirs, devisees, assignees, committee, or other person legally

representing the deceased or otherwise incapable party unless he be first called upon to testify in relation to said transaction or declaration or admission by the other party, or the opposite party first testify in relation to the same, or unless the transaction or contract was made or had with an agent of the said deceased or otherwise incapable party, and said agent testifies in relation thereto.

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 567), repealing 31 Stat. L., pt. 1, p. 1189.

See secs. 1065, 1066.

R. S. U. S. sec. 858, Comp. Stat. D. C. p. 566, sec. 5.

Testimony of widow as to work done in connection with business owned jointly with her husband is not testimony "to a transaction or contract" with the deceased. *Ellis v. Ellis*, 51 App. D. C. 383 (1921); 50 W. L. R. 278, citing *Tuohy v. Trail*, 19 App. D. C. 79 (1902); 30 W. L. R. 3.

As to duty of court to call witness to testify under Code provision prior to 41 Stat. L. 567, see *James v. Janes*, 51 App. D. C. 267 (1922); 50 W. L. R. 132. See also *Conkling v. Life Ins. Co.*, 49 App. D. C. 166 (1919); 48 W. L. R. 2. *Ochstadt v. Bowles*, 34 App. D. C. 58 (1909); 37 W. L. R. 797.

Plaintiff can not testify as to statements made by defendant's testator to a third person, in the presence of the witness. The statute "clearly forbids the surviving party to testify to any admission of the deceased made with respect to a transaction had with him." *McCurley v. National Savings and Trust Co.*, 49 App. D. C. 11 (1919), citing *Dawson v. Waggaman*, 23 App. D. C. 428; 32 W. L. R. 226. *Patten v. Glover*, 1 App. D. C. 466, 21 W. L. R. 794; affirmed in 165 U. S. 394. *Manogue v. Herrell*, 13 App. D. C. 455, 26 W. L. R. 775. See also *Parish v. McGowan*, 39 App. D. C. 184, 40 W. L. R. 726; reversed in 237 U. S. 285.

Quære: Whether a joint maker of a note can testify as a witness for plaintiff as to an agreement with the deceased comaker, stopping the statute of limitations, where the suit was originally brought against the witness and the representatives of the decedent, and prosecuted only against decedent. *White v. Conn. Life Ins. Co.*, 34 App. D. C. 460 (1910); 38 W. L. R. 154.

The statute prohibits testimony "First, as to any transaction with the decedent; second, as to any declaration of the decedent; and third, as to any admission by the decedent." *Lockwood v. Rucker*, 34 App. D. C. 376 (1910); 38 W. L. R. 216. "We think the statute should not be extended to prevent the living party from testifying to the truth or falsity of mere extraneous facts, which have been testified to by other witnesses, not involving declarations or admissions by the deceased party." *Ib.*

Jones v. Slaughter, 28 App. D. C. 43 (1906); 34 W. L. R. 462, distinguishing *Tuohy v. Trail*, *supra*, and citing *Mankey v. Willoughby*, 21 App. D. C. 314 (1903); 31 W. L. R. 226.

See also *Bowie v. Hume*, 13 App. D. C. 286 (1898); 26 W. L. R. 690. *Marmon v. McClellan*, 11 App. D. C. 467 (1897); 25 W. L. R. 790. *Nieman v. Mitchell*, 2 App. D. C. 195 (1894); 22 W. L. R. 59.

SEC. 1065. TESTIMONY OF DECEASED OR INSANE PARTY.—If a party, after having testified at a time when he was competent to do so, shall die or become insane or otherwise incapable of testifying, his testimony may be given in evidence in any trial or hearing in relation to the same subject-matter between the same parties or their legal representatives, as the case may be; and in such case the opposite party may testify in opposition thereto.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 540), repealing 31 Stat. L., pt. 1, p. 1189.

A coroner's inquest is not an action or judicial proceeding between the same parties or their legal representatives within the meaning of this section. *Capital Traction Co. v. King*, 44 App. D. C. 315 (1916); 44 W. L. R. 38.

SEC. 1066. PARTNERS.—Where any of the original parties to a contract or transaction which is the subject of investigation are partners or other joint contractors, or jointly entitled or liable, and some of them have died or otherwise become incapable of testifying, any

others with whom the contract or transaction was personally made or had, or in whose presence or with whose privity it was made or had, or admissions in relation to the same were made, shall not, nor shall the adverse party, be incompetent to testify because some of the parties or joint contractors, or those jointly entitled or liable, have died or otherwise become incapable of testifying.

SEC. 1067. CONVICTION OF CRIME.—No person shall be incompetent to testify, in either civil or criminal proceedings, by reason of his having been convicted of crime, but such fact may be given in evidence to affect his credit as a witness, either upon the cross-examination of the witness or by evidence aliunde; and the party cross-examining him shall not be concluded by his answers as to such matters. In order to prove such conviction of crime it shall not be necessary to produce the whole record of the proceedings containing such conviction, but the certificate, under seal, of the clerk of the court wherein such proceedings were had, stating the fact of the conviction and for what cause, shall be sufficient.

Act of June 30, 1902 (32 Stat. L., p. 540), striking out words "other than perjury."

According to this section, "the certificate is necessary only in order to prove previous convictions where the defendant being examined denies the convictions." *Gordon v. U. S.*, 53 App. D. C. 154 (1923); 51 W. L. R. 508.

The word "crime" includes both felonies and misdemeanors. *Murray v. U. S.*, 53 App. D. C. 119 (1923); 51 W. L. R. 358. The remoteness of the conviction does not affect its admissibility. *Id.*

SEC. 1068. HUSBAND AND WIFE.—In both civil and criminal proceedings, husband and wife shall be competent but not compellable to testify for or against each other.

See sections 964, 1069.

R. S. D. C. sec. 877, Comp. Stat. D. C. p. 566, sec. 2.

"The purpose of section 1068 * * * was to remove grounds of incompetency and not increase them * * *. Therefore a husband or wife, under this statute, can claim no greater privilege than existed at common law." *Halback v. Hill*, 49 App. D. C. 127 (1919); 48 W. L. R. 51. At common law "in collateral proceedings not immediately affecting their mutual interests, either husband or wife might be a witness, although the evidence of one tended to criminate the other, or to contradict the other, or to subject the other to a legal demand." *Id.*

"The code specifically provides that 'husband and wife shall be competent * * * to testify for or against each other.' Section 964 of the code * * * has no relation to the competency of the witnesses * * *. The section (964) deals only with the weight of the evidence." *Early v. Early*, 49 App. D. C. 123 (1919); 48 W. L. R. 39.

Section 1068 must be taken "as qualified by section 964 of the code, which provides a special rule of evidence for divorce cases." *Lenoir v. Lenoir*, 24 App. D. C. 160 (1904); 32 W. L. R. 456.

See also *Mallery v. Frye*, 21 App. D. C. 105 (1903); 31 W. L. R. 63. *Bergheimer v. Bergheimer*, 17 App. D. C. 381 (1901); 29 W. L. R. 74. *Capital Tr. Co. v. Lusby*, 12 App. D. C. 295 (1898); 26 W. L. R. 163. *McCartney v. Fletcher*, 10 App. D. C. 572 (1897); 25 W. L. R. 311. *Hopkins v. Grimshaw*, 165 U. S. 342 (1897). *Chase v. U. S.*, 7 App. D. C. 149 (1895); 23 W. L. R. 733.

SEC. 1069. CONFIDENTIAL COMMUNICATIONS.—In neither civil nor criminal proceedings shall a husband or his wife be competent to testify as to any confidential communications made by one to the other during the marriage.

See sections 964, 1068.

Communications prior to marriage are not confidential. *Halback v. Hill*, 49 App. D. C. 127 (1919); 48 W. L. R. 51.

Quære, whether, in the prosecution of the husband for selling liquor on Sunday, the wife of the accused, who made the sale, will be permitted to testify as to instructions or prohibitions she had from her husband as to selling on Sunday. *Trometer v. D. C.*, 24 App. D. C. 242 (1904); 32 W. L. R. 763.

SEC. 1070. RECORD DEBT, PROOF OF.—An exemplification of the record under the hand of the keeper of the same, and the seal of the court or office where such record may be made, shall be good and sufficient evidence to prove any record made or entered in any of the States or Territories of the United States; and the certificate of the party purporting to be the keeper of such record, accompanied by such seal, shall be *prima facie* evidence of that fact.

SEC. 1071. RECORD OF DEEDS AND WILLS.—The copy of the record of any deed or other instrument of writing, not of a testamentary character, where the laws of the State, Territory, or country where the same may be recorded require such record, and which has been recorded agreeably to such laws, and the copy of any will which such laws require to be admitted to probate and record, by judicial decree, and of the decree of the court admitting the same to probate and record, under the hand of the clerk or other keeper of such record and the seal of the court or office in which such record has been made, shall be good and sufficient *prima facie* evidence to prove the existence and contents of such deed, or will, or other instrument of writing, and that it was executed as it purports to have been.

Act of Maryland of 1785, ch. 46, sec. 2, Comp. Stat. D. C. p. 220, sec. 33. *Scott v. Herrell*, 27 App. D. C. 395 (1906); 34 W. L. R. 401. See also *Droop v. Ridenour*, 11 App. D. C. 224 (1897); 25 W. L. R. 481.

SEC. 1072. PRODUCTION OF BOOKS AND PAPERS.—In an action at common law the court may, on motion, and on reasonable notice thereof, require the parties to produce books and writings in their possession or power, which contain evidence pertinent to the issue, in cases and under circumstances where they might heretofore have been compelled to produce the same by the ordinary rules of proceeding in chancery.

As to effect of this section on equitable remedy of discovery, see *Curriden v. Middleton*, 37 App. D. C. 568 (1911); 39 W. L. R. 796, affirmed in 232 U. S. 633.

SEC. 1073. PHYSICIANS, TESTIMONY OF.—In the courts of the District of Columbia no physician or surgeon shall be permitted, without the consent of the person afflicted, or of his legal representatives, to disclose any information, confidential in its nature, which he shall have acquired in attending a patient in a professional capacity and which was necessary to enable him to act in that capacity: *Provided*, That this section shall not apply to evidence in criminal cases where the accused is charged with causing the death of or inflicting injuries upon a human being, and the disclosure shall be required in the interests of public justice.

Act of May 25, 1896 (29 Stat. L., p. 138).

"It is for the court, and not the witness, to determine whether or not the facts upon which the conclusion or opinion is founded are within or without the limitations of the statute," and it is error to permit the "witness to discriminate as to matters of fact in his own mind, and merely state his conclusion to the jury." *Hutchins v. Hutchins*, 48 App. D. C. 495 (1919); 47 W. L. R. 211.

"It is well settled that physicians and surgeons may be compelled to testify to the facts disclosed by an autopsy, where the relation of physician and

patient did not exist under the lifetime of the deceased." *Carmody v. Capital Traction Co.*, 43 App. D. C. 245 (1915); 43 W. L. R. 168.

Plaintiff calling a physician to testify as to his physical condition at a certain time does not waive the right to object to the testimony of a physician who made an examination at a different time. *Mays v. New Amsterdam Casualty Co.*, 40 App. D. C. 249 (1913); 41 W. L. R. 258, *citing* *Prudential Ins. Co. v. Lear*, 31 App. D. C. 184; 36 W. L. R. 280. *B. & O. R. Co. v. Morgan*, 35 App. D. C. 195; 38 W. L. R. 326. See also *Casualty Co. v. Mays*, 43 App. D. C. 84 (1915); 43 W. L. R. 39; *certiorari denied*, 238 U. S. 624.

SEC. 1073a. Whenever the court shall be satisfied that the party producing a witness has been taken by surprise by the testimony of such witness, such party may, in the discretion of the court, be allowed to prove, for the purpose only of affecting the credibility of the witness, that the witness has made to such party or to his attorney statements substantially variant from his sworn testimony about material facts in the cause; but before such proof can be given the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness, and he must be asked whether or not he made such statements and if so allowed to explain them.

Interpolated by act of June 30, 1902 (32 Stat. L. pt. 1, p. 540).

SEC. 1073b. PROOF OF MUNICIPAL ORDINANCES AND REGULATIONS.—Municipal ordinances and regulations in force in the District of Columbia may be proved by producing in evidence a copy thereof certified by the secretary or an assistant secretary of the Board of Commissioners of the District of Columbia, and such certified copy shall be prima facie evidence of the due adoption and promulgation of such ordinances and regulations.

Interpolated by act of April 19, 1920 (41 Stat. L. pt. 1, p. 567).

CHAPTER TWENTY-SIX

EXECUTION

SEC. 1074. WHEN ISSUED.—Where the right to issue an execution is not suspended by agreement or by an injunction or by an appeal operating as a supersedeas, a writ of execution may be issued immediately on the rendition of the judgment or at any time within three years thereafter; and where the right to issue the same is suspended by any of the causes aforesaid said writ may be issued within three years after the removal of the suspension, and every such writ shall be returnable on or before the sixtieth day after its date.

“Unless an appeal operates as a supersedeas, execution of the judgment may be had immediately.” *Sechrist v. Bryant*, 52 App. D. C. 286 (1923); 51 W. L. R. 67. *Byrne v. Morrison*, 25 App. D. C. 72 (1905); 33 W. L. R. 215.

As to proceedings to vacate execution sales, see *Shipley v. Shammwell*, 41 App. D. C. 267 (1914); 42 W. L. R. 39, *citing* *Starr v. U. S.*, 8 App. D. C. 552. *Hart v. Hines*, 10 App. D. C. 366. *Bieber v. Fechheimer*, 9 App. D. C. 548 (1896); 25 W. L. R. 18.

SEC. 1075. ALIAS WRITS.—If the execution be issued and returned unsatisfied, in whole or in part, within said period of three years, an alias writ may be issued at any time during the life of the judgment.

Moses v. U. S., 19 App. D. C. 290 (1902); 30 W. L. R. 56.

SEC. 1076. RETURN.—If the return shall be omitted to be made on or before the return day expressed in the writ it may nevertheless be made afterwards as of that date.

SEC. 1077. SCIRE FACIAS.—If said writ shall not be issued within the time allowed therefor, as aforesaid, it shall not be issued until a scire facias has been issued upon said judgment and a fiat has been rendered thereupon. Said fiat shall be deemed a renewal of the judgment, and the same rule shall apply thereto in relation to the issuing of execution thereon as to the original judgment.

See section 1104.

“Scire facias to revive a former judgment * * * is a judicial writ, and is converted into an action only by appearance and plea thereto by the defendant.” *Dutton v. Parish*, 34 App. D. C. 393 (1910); 38 W. L. R. 106, *citing* *Collins v. McBlair*, 29 App. D. C. 354; 35 W. L. R. 243. “Unless it is thus converted into an action, its character is unchanged, and its life ends in a year and a day from its issuance.” *Ib.*

“Twelve years is fixed by statute as the life of a judgment * * * and at any time during that period the writ of scire facias may be issued by the creditor for the revival of the judgment by merely filing a praecipe with the clerk.” *Simpson v. Mannix*, 30 App. D. C. 582 (1908); 36 W. L. R. 200. Bankruptcy of defendant may be pleaded as a defense, but such defense does not inure to the benefit of a codefendant. *Ib.*

See also *Moses v. U. S.*, 19 App. D. C. 290 (1902); 30 W. L. R. 56. *Green v. Mann*, 19 App. D. C. 243 (1902); 30 W. L. R. 57. *Roller v. Caruthers*, 5 App. D. C. 368 (1895); 23 W. L. R. 151. *Galt v. Todd*, 5 App. D. C. 350 (1895); 23 W. L. R. 98. *Otterback v. Patch*, 5 App. D. C. 69 (1894); 22 W. L. R. 833.

SEC. 1078. FIAT.—At any time during the life of the original judgment the plaintiff may elect, instead of issuing execution thereon within the time allowed therefor, to issue a scire facias on the same and obtain a new judgment as aforesaid.

See annotations to section 1077.

SEC. 1079. LIEN OF EXECUTION.—A writ of fieri facias issued upon a judgment of the supreme court of the District shall be a lien from the time of its delivery to the marshal upon all the goods and chattels of the judgment defendant, except such as may be exempted from levy and sale by express provision of law, *and shall also be a lien upon the equitable interest of the judgment defendant in goods and chattels in his possession.*

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 540).

See section 1105.

A judgment creditor, filing a bill in his own right only, to subject the equitable estate of the debtor to the satisfaction of the judgment, "acquires an equitable lien as of the date of the filing of his bill and the issuance of process thereon." *Arlington Brewing Co. v. Wyvill*, 35 App. D. C. 589 (1910); 38 W. L. R. 748, *citing* *Gottschalk v. Distillery Co.*, 7 App. D. C. 169; *Fulton v. Fletcher*, 12 App. D. C. 1; *Babbington v. Brewery Co.*, 13 App. D. C. 527; *May v. Bryan*, 17 App. D. C. 392; *Ohio National Bank v. Berlin*, 26 App. D. C. 218. As to effect on priorities of filing bill for the benefit of himself and such other judgment creditors who may intervene, see *ib.*

Judgment lien is "subordinated to the superior equities of a prior specific lien." *Crosby v. Ridout*, 27 App. D. C. 481 (1906); 34 W. L. R. 320.

See also *Manogue v. Bryant*, 15 App. D. C. 245 (1899); 27 W. L. R. 478. *Davis v. Harper*, 14 App. D. C. 463 (1899); 27 W. L. R. 494.

SEC. 1080. DEATH OF DEBTOR.—The death of the judgment debtor after the execution has been delivered to the marshal shall not affect his authority to proceed against the property bound by it.

SEC. 1081. JUDGMENT OF JUSTICE OF THE PEACE.—An execution issued on a judgment of a justice of the peace shall not be a lien on the personal property of the judgment defendant except from the time when it is actually levied, and then it shall have priority over any execution issued out of said supreme court after said levy. It shall not be levied on real estate.

Green v. Mann, 19 App. D. C. 243 (1902); 30 W. L. R. 57.

Davis v. Harper, 14 App. D. C. 463 (1899); 27 W. L. R. 494.

SEC. 1082. ON WHAT FIERI FACIAS MAY BE LEVIED.—The writ of fieri facias may be levied on all goods and chattels of the debtor not exempt as aforesaid, and upon gold and silver coin, bank notes or other money, bills, checks, promissory notes or bonds, or certificates of stock in corporations owned by said debtor, and upon money owned by him in the hands of the marshal or of a constable charged with the execution of such writ, and such fieri facias issued from said supreme court may be levied on all *legal* leasehold and freehold estates of the debtor in land.

See section 1014, 1105.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 540).

American Savings Bank v. Elsminger, 35 App. D. C. 51 (1910); 38 W. L. R. 252 (see annotation to sec. 499).

SEC. 1083. LEVY ON MONEY.—If the fieri facias is levied on money belonging to the judgment defendant the marshal shall not expose the same to sale, but shall account for it as money collected, but

bills or other evidences of debt levied upon shall be sold as other personal property is sold, and the marshal is hereby authorized and empowered to indorse the same to pass title to the purchaser.

SEC. 1084. **LEVY ON CHATTELS PLEDGED.**—The interest of the debtor in personal chattels lawfully pledged for the payment of a debt or performance of a contract, or held by a trustee and in which the debtor's interest is only equitable, may be levied upon in the hands of the pledgee or trustee without disturbing the possession of the latter, and the lien thus obtained may be enforced by proceedings in equity. *In other cases of equitable interest of the judgment debtor in personal chattels execution may also be levied thereon and the lien thus obtained may be enforced by proceedings in equity.*

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 541).

SEC. 1085. **APPRAISEMENT.**—*Where not herein otherwise provided* all property levied upon, except money, shall be appraised by two sworn appraisers and sold at public auction for cash; personal property after ten days' notice by advertisement, and leasehold and freehold estate in land after a twenty days' previous notice by advertisement, containing a description sufficiently definite to be embodied in a conveyance of the title.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 541).

Shipley v. Shamwell, 41 App. D. C. 267 (1914); 42 W. L. R. 39.

SEC. 1086. **ATTACHMENT, WHEN ISSUED.**—An attachment may be issued upon a judgment either before or after or at the same time with a fieri facias: *Provided*, That if costs are unnecessarily multiplied thereby they shall be charged to the party causing the same to be issued.

SEC. 1087. **SCIRE FACIAS UNNECESSARY.**—The said attachment may be issued at any time during the life of the judgment, without issuing a scire facias previously thereto.

SEC. 1088. **ON WHAT ATTACHMENT MAY BE LEVIED.**—An attachment may be levied upon the judgment debtor's goods, chattels, and credits.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 541) repealing 31 Stat. L., pt. 1, p. 1189.

SEC. 1089. **INTERROGATORIES.**—In all cases of attachment the plaintiff may exhibit interrogatories in writing, in such form as may be allowed by the rules or special order of the court, to be served upon any garnishee concerning any property of the defendant in his possession or charge or any indebtedness of his to the defendant at the time of the service of the attachment or between the time of such service and the filing of his answers to said interrogatories; and the garnishee shall file his answers, under oath, to such interrogatories within ten days after service of the same upon him. In addition to the answers to written interrogatories required of him, the garnishee may, on motion, be required to appear in court and be examined orally, under oath, touching any property or credits of the defendant in his hands.

Answer by corporation to interrogatories, *International Seal Co. v. Beyer*, 33 App. D. C. 172 (1909); 37 W. L. R. 261. (See annotation to sec. 447.)

Where a garnishment is issued against a trust company, it may be compelled to disclose whether or not judgment debtor has a safe deposit box with

it. *Washington Loan & Trust Co. v. Coal Co.*, 26 App. D. C. 149 (1905); 33 W. L. R. 738.

Garnishee may (without leave of court) answer interrogatories at any time before action is taken to enforce his default. *Banville v. Sullivan*, 11 App. D. C. 23 (1897); 25 W. L. R. 345.

SEC. 1090. HOW ATTACHMENTS LEVIED.—The attachments shall be levied upon credits of the defendant in the hands of a garnishee by serving him with a copy of the writ of attachment and of the interrogatories accompanying the same, and a notice that any property or credits of the defendant in his hands are seized by virtue of the attachment. It may be levied upon debts due to the defendant upon any judgment or decree by a similar service upon the debtor owing the same.

SEC. 1091. MONEY IN HANDS OF AN OFFICER.—The said attachment may be levied upon money or property of the defendant in the hands of the marshal or coroner, and shall bind the same from the time of service, and shall be a legal excuse to the officer for not paying or delivering the same as he would otherwise be bound to do. *The attachment may also be levied upon money or property of the defendant in the hands of an executor or administrator, and shall bind the same from the time of service; but if the executor or administrator shall make return to the writ that he can not certainly answer whether the defendant's share of the money or property in his hands will prove sufficient to pay the plaintiff's debt, no judgment of condemnation shall be rendered as against such executor or administrator until the passage by the orphans' court of his final or other account showing money or property in his hands to which the defendant is entitled.*

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 541).

In a suit in the Municipal Court against an administratrix to recover an alleged claim of \$200 against the decedent, held, that that court has no jurisdiction. Referring to Code section 1091 it was said: “* * *. The defendant referred to is one who has a right to money in the hands of an administrator or executor of an estate which is subject to a judgment against him. Here the administratrix has no money in her hands ‘belonging to the defendant.’ The section, therefore, does not apply.” *Sanford v. Sanford*, 52 App. D. C. 315 (1923); 51 W. L. R. 202.

Executor, who is sole beneficiary of estate, may distribute the estate to himself without an order of court, and having done so, there is no property in his hands as executor subject to attachment on a judgment against him personally. *Miller-Shoemaker R. E. Co. v. Sturgeon*, 31 App. D. C. 406 (1908); 36 W. L. R. 350.

SEC. 1092. HOW LEVIED ON PATENT RIGHTS.—The said attachment may be levied upon any patent right of the defendant by the marshal by leaving a copy of the writ with the Commissioner of Patents, with a notice that he has seized said patent rights, and for what purpose, and he shall return a copy of said notice with the writ. The said notice shall thereupon be recorded in the record of assignments in the Patent Office.]

Repealed, Act of June 30, 1902 (32 Stat. L., pt. 1, p. 541).

SEC. 1093. PRESERVATION OF PROPERTY SEIZED.—The court may make all orders necessary for the preservation of the property attached, and if the same be perishable, or for other reasons a sale of the same shall be expedient, may order that the same be sold and the proceeds paid into court and held subject to its order.

SEC. 1094. PLEADING TO THE ATTACHMENT.—Any garnishee or stranger to the suit who may make claim to the property attached as hereinafter provided, may plead to the attachment, and such plea

shall be considered as raising an issue without replication, and any issue of fact thereby made may be tried by the court or by a jury impaneled for the purpose, if either party desire it.

SEC. 1095. TRAVERSING GARNISHEE'S ANSWERS.—If any garnishee shall answer to interrogatories that he has no property or credits of the defendant or less than the amount of the plaintiff's judgment, the plaintiff may traverse such answer as to the existence or amount of such property or credits, and the issue thereby made may be tried as provided in the last aforesaid section; and in such case, where judgment is rendered for the garnishee, the plaintiff shall be adjudged to pay to the garnishee, in addition to his taxed costs, a reasonable counsel fee; and if such issue be found for the plaintiff, judgment shall be rendered as if possession of the property or credits had been confessed by the garnishee.

SEC. 1096. CLAIMS BY THIRD PERSONS.—Any person may file his petition in the cause, under oath, at any time before the final disposition of the property attached or its proceeds, not being real estate, setting forth a claim thereto or an interest in or lien upon the same; and the court, without other pleadings, shall inquire into the claim, and, if either party request it, impanel a jury for the purpose, who shall be sworn to try the question involved as an issue between the claimant as plaintiff and the parties to the suit as defendants, and the court may make all such orders as may be necessary to protect any rights of the petitioner.

See section 462.

Action against judgment creditor and United States marshal for unlawful levy under fieri facias. *Malnati v. Thomas*, 26 App. D. C. 277 (1905); 34 W. L. R. 5.

Brown v. Petersen, 25 App. D. C. 359 (1905); 33 W. L. R. 310.

SEC. 1097. JUDGMENT OF CONDEMNATION OF PROPERTY.—Where the attachment has been levied upon specific property, on the return by the marshal judgment of condemnation of the same may be entered, and so much thereof as may be necessary to satisfy the plaintiff's judgment may be sold under a fieri facias; or, if said property shall have been sold under interlocutory order of the court, the proceeds, or so much thereof as may be necessary, shall be applied to the plaintiff's claim by order of the court.

SEC. 1098. JUDGMENT AGAINST GARNISHEE.—If a garnishee shall have admitted credits in his hands, in answer to interrogatories served upon him, or the same shall have been found upon an issue made as aforesaid, judgment shall be entered against him for the amount of credits admitted or found as aforesaid, not exceeding the amount of the plaintiff's judgment, and costs, and execution shall be had thereon not to exceed the credits in his hands; but if said credits shall not be immediately due and payable, execution shall be stayed until the same shall become due; and if the garnishee shall have failed to answer the interrogatories served on him, or to appear and show cause why a judgment of condemnation should not be entered, such judgment shall be entered against him for the whole amount of the plaintiff's judgment and costs, and execution shall be had thereon.

See section 467.

International Seal Co. v. Beyer, 33 App. D. C. 172; 37 W. L. R. 261 (see annotation to sec. 447).

Banville v. Sullivan, 11 App. D. C. 23; 25 W. L. R. 345 (see annotation to sec. 1089).

§SEC. 1099. CONDEMNATION AND SALE OF PATENT RIGHTS.—If the property attached be a patent right, on the marshal's return judgment of condemnation of the said property shall be entered and the marshal shall sell the same under fieri facias at public auction in the same manner as real estate. Any patent right condemned and sold as aforesaid shall be assigned by the marshal to the purchaser in the same manner in which such assignments are made by private persons, and his said assignment may be recorded in the proper book or record of assignment in the Patent Office.]

Repealed, Act of June 30, 1902 (32 Stat. L., pt. 1, p. 541).

SEC. 1100. DELIVERY OF POSSESSION OF PROPERTY SOLD.—When real estate is sold by virtue of any execution, and the judgment defendant or any person claiming under him since the rendition of the judgment is in actual possession of the property and refuses to deliver possession thereof to the purchaser upon demand made therefor, it shall be lawful for the court, on the application of the purchaser, to require the person so in possession to show cause why possession should not be delivered according to said demand, and, if no good cause be shown, to issue a writ of habere facias possessionem, requiring the marshal to put the purchaser in possession. If the party in possession shall allege under oath a title derived from the judgment debtor prior to the judgment or a title superior to that of the defendant, said writ shall not issue, but the purchaser may have his remedy by an action of ejectment or the summary remedy before a justice of the peace as herein provided in subchapter one of chapter one.

SEC. 1101. CHANGE OF MARSHAL.—If the marshal or coroner die, be removed from office, or become otherwise disqualified from executing a writ of execution received by him, the same may be executed and returned by his deputy or successor in office.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 541).

SEC. 1102. DEFECTIVE SALE.—If upon the sale of property under execution the title of the purchaser is invalid by reason of a defect in the proceedings, the purchaser may be subrogated to the rights of the creditor against the debtor to the extent of the money paid by him and applied to the debtor's benefit, and to that extent shall have a lien on the property sold against all persons except bona fide purchasers without notice; but the creditor shall not be required to refund the purchase money on account of the invalidity of the sale.

Hart v. Hines, 10 App. D. C. 366 (1897); 25 W. L. R. 217.

Starr v. U. S., 8 App. D. C. 552 (1896); 24 W. L. R. 502.

SEC. 1103. REMEDY OF MARSHAL.—Where the marshal or any other officer to whom execution has been delivered levies upon and sells in good faith property not subject thereto and applies the proceeds thereof toward the satisfaction of the judgment, and a recovery is had against him for its value, the officer, on payment of said value, may, on motion and due notice thereof to the defendant, have the satisfaction of said judgment vacated, and execution shall issue thereon for his use as if said levy and sale had not been made.

SEC. 1104. DECREE IN EQUITY.—The foregoing provisions shall be applicable to an unconditional decree in equity for the payment of money. Such decree may be revived by scire facias, and the same writs of execution may be issued thereon within the same time and have the same effect as liens, and shall be executed and returned in the same manner as if issued upon a common-law judgment.

See section 1077.

Lynham v. Hufty, 44 App. D. C. 589 (1916) ; 44 W. L. R. 229.

CHAPTER TWENTY-SEVEN

EXEMPTIONS

SEC. 1105. WHAT PROPERTY OF HOUSEHOLDER EXEMPT.—The following property, being the property of the head of a family or householder residing in the District of Columbia, shall be exempt from distraint, attachment, levy, and sale on execution or decree of any court in the District:

First. All wearing apparel belonging to all persons and to all heads of families being householders.

Second. All beds, bedding, household furniture, stoves, cooking utensils, and so forth, not exceeding three hundred dollars in value.

Third. Provisions for three months' support, whether provided or growing.

Fourth. Fuel for three months.

Fifth. Mechanics' tools and implements of the debtor's trade or business amounting to two hundred dollars in value, with two hundred dollars' worth of stock for carrying on the business of the debtor or his family. This exemption shall apply to merchants.

Sixth. The library and implements of a professional man or artist, to the value of three hundred dollars.

Seventh. One horse, mule, or yoke of oxen; one cart, wagon, or dray, and harness for such team.

Eighth. Farming utensils, with food for such team for three months, and, if the debtor be a farmer, any other farming tools of the value of one hundred dollars.

Ninth. All family pictures and all the family library, not exceeding in value four hundred dollars.

Tenth. One cow, one swine, six sheep.

And these exemptions shall be valid when the property is in transitu, the same as if at rest; but no property named and exempted in this section shall be exempted from attachment or execution for any debt due for the wages of servants, common laborers, or clerks, except the wearing apparel, beds and bedding, and household furniture for the debtor and family.

See sections 314, 435, 444, 564, 759, 1162.

R. S. D. C., sections 797, 798, Act of June 19, 1878 (20 Stat. L., p. 173); Comp. Stat. D. C., p. 225, secs. 13-15.

Furniture not used by the debtor or his family for their own household purposes, but for commercial purposes, is not exempt. *Moore & Hill v. Buckler*, 44 App. D. C. 487 (1916); 44 W. L. R. 168.

Where the sole asset of a decedent's estate was a drug business, which was sold in bulk by agreement of all parties in interest, it is not error to allow the widow \$200 for tools and implements and \$200 for stock in trade out of the proceeds of the sale, it appearing that the widow had not waived the exemption, and more than its value was realized by the sale. *Howard v. Howard*, 38 App. D. C. 575 (1912); 40 W. L. R. 293.

See also *The Richmond v. Cake*, 1 App. D. C. 447 (1893); 21 W. L. R. 819.

SEC. 1106. MORTGAGE OF EXEMPT PROPERTY.—No deed of trust, assignment for the benefit of creditors, bill of sale, or mortgage upon any exempted articles shall be binding or valid unless signed by the wife of the debtor, if he be married and living with his wife.

SEC. 1107. EARNINGS.—The earnings, not to exceed one hundred dollars each month, of all actual residents of the District of Columbia who provide for the support of a family in said District, for two months next preceding the issuing of any writ or process from any court or officer of and in said District, against them, shall be exempt from attachment, levy, seizure, or sale upon such process, and the same shall not be seized, levied on, taken, reached, or sold by attachment, execution, or any other process or proceedings of any court, judge, or other officer of and in said District.

CHAPTER TWENTY-EIGHT

FEES OF OFFICERS AND OTHERS

SEC. 1108. NOTHING HEREIN TO PROHIBIT AGREEMENTS WITH CLIENTS.—The following, and no other, compensation shall be taxed and allowed to attorneys, solicitors, proctors, district attorney, clerk of the supreme court of the District, marshal, commissioners, witnesses, and jurors, except in cases otherwise provided for by law; but nothing herein shall be construed to prohibit attorneys, solicitors, and proctors from charging or receiving from their clients other than the Government such reasonable compensation for their services, in addition to the taxable costs, as may be in accordance with general usage or may be agreed upon:

R. S. U. S., sections 823, 824, 828.

Husband's counsel fees can not be charged against the corespondent in a divorce action. *Eichelberger v. Symons*, 53 App. D. C. 116 (1923); 51 W. L. R. 443.

As to allowance of attorney's fees in partition suits, see *Fletcher v. Coomes*, 52 App. D. C. 159 (1922); 51 W. L. R. 35.

SEC. 1109. ATTORNEYS, SOLICITORS, AND PROCTORS.—On a trial before a jury in civil or criminal causes or before referees, or on a final hearing in equity or admiralty, a docket fee of twenty dollars: *Provided*, That in cases of admiralty and maritime jurisdiction where the libelant recovers less than fifty dollars the docket fee of his proctor shall be only ten dollars.

In cases at law where judgment is rendered without a jury, ten dollars.

In cases at law when the cause is discontinued, five dollars.

For scire facias, or other proceedings on recognizances, five dollars.

For each deposition taken and admitted in evidence in a cause, two dollars and fifty cents.

For services rendered in a case removed from the supreme court of the District by an appeal to the court of appeals, five dollars.

For examination by the district attorney before a judge or commissioner of persons charged with crime, five dollars a day for the time necessarily employed.

For each day of the district attorney's attendance in court, five dollars.

When an indictment for a crime is tried before a jury and a conviction is had the district attorney may be allowed, in addition to the fees herein provided, a counsel fee in proportion to the importance of the cause, not exceeding thirty dollars.

There shall be paid to the district attorney two per centum on all moneys collected or realized in any suit or proceeding under the revenue law conducted by him to which the United States is a party, in lieu of all costs and fees in such proceeding.

When the district attorney appears by direction of the Secretary or Solicitor of the Treasury on behalf of any officer of the revenue in any suit against such officer for any act done by him, or to recover any money received by him and paid into the Treasury in the course of his official duty, he shall receive such compensation as may be certified to be proper by the court and approved by the Secretary of the Treasury.

See annotations to section 1108.

SEC. 1110. CLERK'S FEES.—For issuing and entering every process, commission, summons, *capias*, execution, warrant, attachment, or other writ, except a writ of *venire*, or a summons or *subpœna* for a witness, one dollar.

For issuing a writ of *subpœna* or summons, twenty-five cents.

For filing and entering every declaration, plea, or other paper, twenty-five cents.

For administering an oath or affirmation, except to a juror, twenty-five cents.

For taking an acknowledgment, fifty cents.

For taking and certifying depositions to file, twenty cents for each folio of one hundred words.

For a copy of such deposition furnished to a party on request, ten cents a folio.

For entering any return, rule, order, continuance, judgment, decree, or recognizance, or drawing any bond, or making any record, certificate, return, or report, for each folio, fifteen cents.

For a copy of any entry or record, or any paper on file, for each folio, ten cents.

For making dockets or indexes, issuing *venire*, taxing costs, and all other services on the trial or argument of a cause where issue is joined and testimony given, three dollars.

For making dockets or indexes, taxing costs, and all other services in a cause where issue is joined but no testimony is given, two dollars.

For making dockets or indexes, taxing costs, and all other services in a cause which is dismissed or discontinued or where judgment or decree is made or rendered without issue, one dollar.

For making dockets and taxing costs in cases removed by appeal, one dollar.

For affixing the seal of the court to any instrument when required, twenty-five cents.

For every search for any particular judgment or lien, fifteen cents.

For swearing applicant, recording and making certificate of declaration to become a citizen of the United States, one dollar.

For swearing applicant, recording and making certificate of naturalization, three dollars.

For searching the records of the court for judgments, decrees, or other instruments constituting a general lien on real estate and certifying the result of such search, fifteen cents for each person against whom such search is required to be made.

For receiving, keeping, and paying out money in pursuance of any statute or order of court, one per centum of the amount so received, kept, and paid.

For his attendance on the court while actually in session, five dollars per day.

For all services rendered to the United States in cases in which the United States is a party of record, five dollars.

For each marriage license, one dollar.

For each official certificate of marriage, one dollar.

For each certificate of official character, including the seal, fifty cents.

For filing and recording notice of mechanic's lien, one dollar.

For entering release of mechanic's lien, fifty cents.

See section 177.

SEC. 1111. FEES APPERTAINING TO THE PROBATE COURT.—The register of wills, clerk of the probate court, shall be entitled to demand and to receive for services performed by him, in advance of such services, the following fees: For filing petition or caveat, fifty cents; for filing other papers, each, five cents; for making docket and indexes and taxing costs in each case, two dollars and fifty cents; for additional docket entries, each, twenty-five cents; for issuing subpoena to witness and copies, each, twenty-five cents; for issuing subpoena duces tecum, fifty cents; for issuing summons, citation, commission, rule, warrant, notice of trial, process, execution, attachment, or writ, each, one dollar; for issuing notices to creditors, distributees, and legatees, each, fifty cents; for copies of summons, citation, rule, warrant, or other process, order of publication, notices to creditors, legatees, and distributees, attested under seal and delivered for service or publication, each, fifty cents; for taking and recording every bond, one dollar and fifty cents; for every probate of will, inventory, or account, one dollar; for issuing letters testamentary or of administration, collection, or guardianship, one dollar; for issuing certificate of appointment of executor, administrator, collector, or guardian, one dollar; for entering panel of jury and swearing them, fifty cents; for administering an oath or affirmation, fifteen cents; for passing a claim against an estate and entering in docket of claims, thirty cents; for drawing depositions of witnesses, per folio, fifteen cents; for every search of the files or records outside of a regular proceeding, where no other service is performed for which a fee is allowed, one dollar; for examining or stating any account of executor, administrator, collector, guardian, receiver, or trustee, not exceeding one hundred items, five dollars; for each additional item, two cents; for stating the distribution of an estate, for each distributee, one dollar; for copy of an account, not exceeding one hundred items, one dollar and fifty cents; for each additional item, two cents; for recording all papers, per folio, fifteen cents; for copies of all papers not otherwise specified, per folio, twelve cents; for every certificate under seal, not otherwise specified, fifty cents: *Provided*, That in all cases where the estate does not exceed two hundred dollars in value the register of wills shall receive no fees, and where the estate does not exceed five hundred dollars in value the fees shall not exceed ten dollars: *Provided further*, That the court may allow to the register reasonable fees for any service he may render not specified in the preceding section.

See section 177.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 541) repealing 31 Stat. L., pt. 1, p. 1189.

SEC. 1112. MARSHAL'S FEES.—For the service of any warrant, attachment, summons, capias, or other writ (except execution, venire, or a summons or subpoena for a witness), one dollar for each person on whom service may be made: *Provided, however,* That for the service of any citation, summons, notice, or rule issued by the probate court the fee shall be fifty cents for each person on whom service may be made.

For the keeping of personal property attached on mesne process, such compensation as the court, on petition setting forth the facts under oath, may allow.

For serving venires and summoning every twelve men as grand or petit jurors, four dollars, or thirty-three and one-third cents each.

For holding an inquisition or other proceeding before a jury, including the summoning of a jury, five dollars.

For serving a writ of subpoena on a witness, fifty cents; and no further compensation for a copy, summons, or notice for a witness.

For summoning appraisers, fifty cents.

For executing a deed prepared by a party or his attorney, one dollar.

For drawing and executing a deed, five dollars.

For copies of writs or papers furnished at request of any party, ten cents a folio.

For every proclamation in admiralty, thirty cents.

For serving an attachment in rem or libel in admiralty, two dollars.

For the necessary expenses of keeping boats, vessels, or other property attached or libeled in admiralty, not exceeding two dollars and fifty cents a day.

When the debt or claim in admiralty is settled by the parties without a sale of the property, a commission of one per centum on the first five hundred dollars of the claim or decree, and one-half of one per centum on the excess of any sum thereof over five hundred dollars: *Provided,* That when the value of the property is less than the claim such commission shall be allowed only on the appraised value thereof.

For sale of vessels or other property under process in admiralty and for receiving and paying over the money, two and one-half per centum on any sum under five hundred dollars, and one and one-half per centum on the excess of any sum over five hundred dollars.

For disbursing money to jurors and witnesses and for other expenses, two per centum.

For expenses while employed in endeavoring to arrest under process any person charged with or convicted of crime, the sum actually expended, not to exceed two dollars a day.

For every commitment or discharge of a prisoner, fifty cents.

For transporting criminals convicted of a crime in the District to a prison in a State or Territory designated by the Attorney-General, the reasonable actual expense of transportation of the criminals, the marshal, and the guards, and the necessary subsistence and hire.

For attending court and bringing in and committing prisoners and witnesses during the term, five dollars a day.

For attending examinations before a commissioner and bringing in, guarding, and returning prisoners charged with crime, and wit-

nesses, two dollars a day, and for each deputy, not exceeding two, necessarily attending, two dollars a day.

For fuel, lights, and other contingencies that may accrue in holding the courts, the amount of his expenses necessarily incurred.

For levying upon leasehold or freehold property in land and selling the same, a commission of one and one-half per centum on the proceeds to the amount of the debt.

For levying upon leasehold or freehold property in land where no sale thereof is made, one dollar.

For levying upon personal property and selling the same, a commission of three per centum on the proceeds to the amount of the debt and the reasonable cost for storage, keeper, insurance, advertising, and auctioneer.

For levying upon personal property where no sale thereof is made, two dollars and fifty cents and the reasonable cost for storage, keeper, and insurance incurred for the preservation of the same: *Provided*, That the court, on notice to all parties in interest, may allow additional compensation.

R. S. U. S., section 828.

SEC. 1113. COMMISSIONERS' FEES.—Drawing a complaint, with oath and jurat to same, fifty cents; copy of complaint, with certificate to same, thirty cents.

Issuing a warrant of arrest, seventy-five cents.

Issuing a commitment and making copy of same, one dollar.

Entering a return, fifteen cents.

Issuing a subpoena or subpoenas in any one case, with five cents for each necessary witness in addition to the first, twenty-five cents.

Drawing a bond of defendant and sureties, taking acknowledgment of same, and justification of sureties, seventy-five cents.

Administering an oath (except to witness as to attendance and travel), ten cents.

Recognizance of all witnesses in a case when the defendant or defendants are held for court, fifty cents.

Transcripts of proceedings when required by order of court and transmission of original papers to court, sixty cents.

Copy of warrant of arrest, with certificate to same when defendant is held for court and the original papers are not sent to court, forty cents.

Order in duplicate to pay all witnesses in a case—for first witness, thirty cents, and for each additional witness, five cents, and for oath to each witness as to attendance and travel, five cents.

For hearing and deciding on criminal charges and reducing the testimony to writing, when required by law or order of court, five dollars a day for the time necessarily employed: *Provided*, That not more than one per diem shall be allowed in a case, unless the account shall show that the hearing could not be completed in one day, when one additional per diem may be specially approved and allowed by the court: *Provided further*, That not more than one per diem shall be allowed for any one day: *And provided further*, That no per diem shall be allowed for taking a bond or recognizance and passing on the sufficiency of the bond or recognizance and the sureties thereon when the bond or recognizance was taken after the defendant had been committed to prison upon a final commitment, or has given bond or

been recognized for his appearance at court, or when the defendant has been arrested on a *capias* or bench warrant or was in custody under any process or order of a court of record.

For the examination and certificate in cases of the application for discharge of poor convicts, imprisoned for nonpayment of fine, or fine and costs, and all services connected therewith, three dollars.

For attending to a reference in a litigated matter in a civil cause at law, in equity, or in admiralty, in pursuance of an order of the court, three dollars a day.

For taking and certifying depositions to file in civil cases, ten cents for each folio.

For each copy of the same furnished to a party on request, ten cents for each folio.

For issuing any warrant under the tenth article of the treaty of August ninth, eighteen hundred and forty-two, between the United States and the Queen of the United Kingdom of Great Britain and Ireland, against any parties charged with any crime or offense set forth in said articles, two dollars.

For issuing any warrant under the provision of the convention for the surrender of criminals between the United States and the King of the French, concluded at Washington November ninth, eighteen hundred and forty-three, two dollars.

For hearing and deciding upon the case of any person charged with any crime or offense and arrested under the provisions of said treaty or of said convention, five dollars a day for the time necessarily employed.

Such commissioners shall keep a complete record of all proceedings before them in criminal cases in a well bound book, which record book shall be delivered to and be preserved by the clerk of the supreme court of the District of Columbia on the death, resignation, removal, or expiration of the term of the commissioner, for which record the commissioner shall receive no compensation.

R. S. U. S., sections 824 et seq.

SEC. 1114. WITNESS FEES.—For each day's attendance in court or before any officer pursuant to law, one dollar and twenty-five cents; and when a witness is subpoenaed in more than one cause between the same parties at the same term only one *per diem* compensation shall be allowed for attendance; and for traveling, at the rate of five cents *per mile*, coming and returning to and from the witness's place of abode, when summoned from without the District to testify in the courts of the District.

No officer of the United States courts shall be entitled to witness fees for attending before a court or commissioner where he is officiating.

R. S. D. C., section 880, act of February 28, 1799 (1 Stat. L., p. 626); Comp. Stat. D. C., pp. 567, 568, secs. 9 et seq.

Washington & G. R. R. Co. v. American Car Co., 5 App. D. C. 524 (1895); 23 W. L. R. 241.

SEC. 1115. JUROR'S FEES.—For actual attendance at court, two dollars a day during such attendance.

Act of June 21, 1902 (32 Stat. L., p. 396), increasing fees of jurors to \$3 *per diem*.

CHAPTER TWENTY-NINE

FRAUDS, STATUTE OF

SEC. 1116. ESTATES CREATED BY PAROL.—Every estate in lands, tenements, or hereditaments for a greater term than one year attempted to be created by parol, or otherwise than by deed as provided in subchapter one of chapter sixteen, shall be an estate by sufferance.

See sections 492 et seq., 1034.

Where property, held by a tenant under a verbal lease for five years, is sold under a special warranty deed, the purchaser can not compromise with the tenant to secure possession (ignoring the legal procedure provided by sections 1116 and 1221) and then recover on the special warranty the amount of the compromise. *Standard Savings Bank v. Stone*, 52 App. D. C. 42 (1922) ; 50 W. L. R. 376.

When a verbal lease for a longer period than one year will be specifically enforced, see *Kresge v. Crowley*, 47 App. D. C. 13 (1917) ; 45 W. L. R. 855.

SEC. 1117. ACTIONS TO CHARGE EXECUTORS, AND SO FORTH.—No action shall be brought whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate, or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person, or to charge any person upon any agreement made upon consideration of marriage, or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them, or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, which need not state the consideration, and signed by the party to be charged therewith or some other person thereunto by him lawfully authorized.

Act of 29 Car. 2, ch. 3, sec. 1 ; Comp. Stat. D. C., p. 231, sec. 4.

As to contracts not to be performed within the space of one year, see *Campbell v. Rawlings*, 52 App. D. C. 37 (1922) ; 50 W. L. R. 389.

As to sufficiency of memorandum for sale of real estate, see *Lenman v. Jones*, 33 App. D. C. 7 (1909) ; 37 W. L. R. 138 ; affirmed in 222 U. S. 51. *Johnson v. Tribby*, 27 App. D. C. 281 (1906) ; 34 W. L. R. 318 (distinguishing *Waters v. Ritchie*, 3 App. D. C. 379).

Part performance as taking contract out of statute, see *Cherry v. Whalen*, 25 App. D. C. 537 (1905) ; 33 W. L. R. 485 (*following* *Whitney v. Hay*, 15 App. D. C. 164, 181 U. S. 77) ; *McCartney v. Fletcher*, 11 App. D. C. 1 (1897) ; 25 W. L. R. 402.

Distinction between chattels real and personal, *Towson v. Smith*, 13 App. D. C. 48 (1898) ; 26 W. L. R. 392. "An agreement for the sale of fixtures, while forming a part of the realty, is within the provision of the statute of frauds, and can not be excepted by parol from the operation of a deed absolute on its face." *Ib.*

Quaere, "whether an agreement is valid within the statute of frauds if signed by the party to be charged, although unsigned and not binding upon

the other party." *Hazleton v. Le Duc*, 10 App. D. C. 379 (1897); 25 W. L. R. 280.

As to validity of verbal contracts seeking to create a charge or a lien on land, see *Merchant v. Cook*, 7 App. D. C. 391 (1896); 24 W. L. R. 34.

SEC. 1118. DECLARATIONS OF TRUST.—All declarations or creations of trust or confidence of any lands, tenements, or hereditaments shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust or by his last will in writing, or else they shall be utterly void and of none effect.

All grants and assignments of any trust or confidence shall likewise be in writing, signed by the party granting or assigning the same or by such last will or devise, or else shall likewise be utterly void and of none effect.

Where any conveyance shall be made of any lands or tenements by which a trust or confidence shall or may arise or result by the implication or construction of law, or be transferred or extinguished by an act or operation of law, then and in every such case such trust or confidence shall be of the like force and effect as the same would have been if this statute had not been made.

As to trusts by implication or construction of law, see *Slater v. Rudderforth*, 25 App. D. C. 497 (1905), 33 W. L. R. 424; *Long v. Scott*, 24 App. 1 (1904), 32 W. L. R. 326 (where, although a resulting trust was not established, an equitable lien was created; *Brainard v. Buck*, 184 U. S. 99 (1902), affirming 16 App. D. C. 595; *Dorsey v. Manning*, 15 App. D. C. 391 (1899), 27 W. L. R. 788.

A parol agreement whereby one is to purchase real estate with his own money, take title in his own name and hold it for the benefit of another, is within the prohibition of the statute, and does not create a resulting trust. *McIntosh v. Green*, 25 App. D. C. 456 (1905); 33 W. L. R. 423.

Part performance as taking agreement out of statute, *McCartney v. Fletcher*, 11 App. D. C. 1 (1897); 25 W. L. R. 402.

See also *Levis v. Klengla*, 169 U. S. 234 (1898), affirming 8 App. D. C. 230. *Smithsonian Inst. v. Meech*, 169 U. S. 398, reversing 8 App. D. C. 490; *Hopkins v. Grimshaw*, 165 U. S. 342, reversing 17 App. D. C. 1; *Cohen v. Cohen*, 1 App. D. C. 240 (1893), 21 W. L. R. 663.

SEC. 1119. SALE OF GOODS.—No contract for the sale of any goods, wares, and merchandise for the price of fifty dollars or upward shall be allowed to be good except the buyer shall accept part of the goods so sold and actually receive the same or give something in earnest to bind the bargain or in part payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such a contract or their agent thereunto lawfully authorized.

Act of 29 Car. 2, ch. 3, sec. 17, Comp. Stat. D. C., p. 231, sec. 3.

As to sufficiency of memorandum, see *Metzler v. Harry Kaufman Co.*, 32 App. D. C. 434 (1909); 37 W. L. R. 80.

CHAPTER THIRTY

FRAUDULENT CONVEYANCES AND ASSIGNMENTS

SEC. 1120. INTENT TO DEFRAUD CREDITORS.—Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands or rents and profits issuing from the same, or in goods or things in action, and every charge upon the same, and every bond or other evidence of debt given, or judgment or decree suffered, with the intent to hinder, delay, or defraud creditors or other persons having just claims or demands of their lawful suits, damages, or demands, shall be void as against the persons so hindered, delayed, or defrauded: *Provided*, That nothing herein shall be construed to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor: *Provided further*, That the question of fraudulent intent shall be deemed a question of fact and not of law.

"Where the husband, being indebted, conveys all his property to his wife, * * * the burden is on her to prove distinctly and satisfactorily that she is entitled to the property. Such a transaction is viewed by the law with grave suspicion, and requires close scrutiny at the hands of a court of equity." *Evans v. Bell*, 49 App. D. C. 238 (1920); 48 W. L. R. 218. Where judgment debtor conveyed all of his property to his wife, the natural and probable consequence thereof was to delay, hinder, and defraud his creditors, and he must be held to have so intended. *Ib.*, citing *Barber v. Wilds*, 33 App. D. C. 150; 37 W. L. R. 274.

Transaction between mother and son, whereby son became purchaser of mother's real estate to prevent foreclosure under two deeds of trust, held good as against judgment creditor of mother. *Kincheloe v. Murray*, 39 App. D. C. 519 (1913); 41 W. L. R. 55.

This statute "extends its protection not only to technical creditors, but also to those whose claims and demands consist of actions for torts." *Hopewell v. Wright*, 37 App. D. C. 247 (1911); 39 W. L. R. 359, citing *Barth v. Heider*, 7 D. C. 71. If defendant shows the actual payment of a valuable consideration, "it devolves upon the plaintiff to show that he had knowledge of the fraudulent intent * * * in making the sale." *Ib.* As to what constitutes bad faith, see *ib.*

Fraudulent intent is for the jury under section 1120, but "by the reference to this provision of the Code we are not to be understood as saying that Congress could deprive the courts of the right to declare an instrument to be fraudulent in law in every case that may come before them." *Marche v. Johnson*, 37 App. D. C. 36 (1911); 39 W. L. R. 421.

Where a brother, harassed by creditors, conveys all of his property to his sister for little or no consideration, "it is apparent, therefore, that he was not in good faith preferring one creditor over others, as he would have had the right to do. *Merillat v. Hensey*, 32 App. D. C. 64 (36 W. L. R. 726); affirmed in 221 U. S. 333. But, on the contrary, the inevitable consequences flowing from his acts were to hinder, delay, or defraud his creditors, within the meaning of section 1120 of the Code." *Breneman v. Herdman*, 35 App. D. C. 27 (1910); 38 W. L. R. 314.

In proving fraudulent intent "it is generally necessary to call and examine the parties to the alleged fraud, and because of their adverse interest they may be treated as witnesses on cross-examination. The object of the right

of such cross-examination is to draw out of an unwilling witness all such circumstances as may tend to establish the perpetration of the fraud. And while the witness can not be impeached in the ordinary manner permitted in the case of witnesses called by the opposing party, his testimony goes to the jury, or to the court if there be no jury, with such weight as it may be entitled to under all the circumstances." *Dumas v. Clayton*, 32 App. D. C. 566 (1909); 37 W. L. R. 181.

Upon proof of fraudulent intent on part of vendor, the vendee must show purchase in good faith. "To show purchase in good faith the burden was upon him to prove that he actually paid the consideration named in the contract of sale. In addition thereto he must have had no previous notice of the fraudulent intent of his vendors. Upon this proposition the presumption was in his favor, and the burden developed upon the creditors to show, by evidence direct or circumstantial, that he had such notice." *Morimura v. Samaha*, 25 App. D. C. 189 (1905); 33 W. L. R. 258. "A purchaser from a fraudulent vendor * * * is put upon inquiry where he has knowledge of facts and circumstances reasonably sufficient to excite the suspicions of a man of ordinary prudence and business capacity as to the purpose and intent of his vendor, which, if inquired into with ordinary diligence, would lead to the discovery of that purpose and intent. In such a case his situation is not different in law from that of one who is shown to have had direct and certain knowledge." *Ib.*

White v. Glover, 23 App. D. C. 389 (1904); 32 W. L. R. 241; affirmed in 199 U. S. 602.

Bokel, Gwynn, McKenney Co. v. Costello, 22 App. D. C. 81 (1903); 31 W. L. R. 374.

Davis v. Harper, 14 App. D. C. 463 (1899); 27 W. L. R. 494.

Droop v. Ridenour, 11 App. D. C. 224 (1897); 25 W. L. R. 481.

Smith v. Cook, 10 App. D. C. 487 (1897); 25 W. L. R. 251.

Gilbert v. Washington Beneficial Endowment Assoc., 10 App. D. C. 316 (1897); 25 W. L. R. 149; dismissed in 173 U. S. 741.

Clark v. Bradley Coal Co., 6 App. D. C. 437 (1895); 23 W. L. R. 419.

McDaniel v. Parish, 4 App. D. C. 213 (1894); 22 W. L. R. 669.

Hess v. Horton, 2 App. D. C. 81 (1893); 22 W. L. R. 73.

SEC. 1121. INTENT TO DEFRAUD PURCHASERS.—Every conveyance of any estate or interest in land or the rents and profits thereof, and every charge upon the same, made or created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents, or profits, shall, as against such purchasers, be void; but no such conveyance or charge shall be deemed fraudulent in favor of a subsequent purchaser who shall have actual or legal notice thereof at the time of his purchase, unless it appear that the grantee in such conveyance, or the person to be benefited by such charge, was privy to the fraud intended.

Act of 27 Eliz., ch. 4, Comp. Stat. D. C., pp. 234 et seq. See annotations to sec. 1120.

SEC. 1122. EXECUTORS, AND SO FORTH, MAY SUE TO VACATE FRAUDULENT DEED.—Any executor, administrator, receiver, assignee, or other trustee of an estate, or of the property and effects of an insolvent estate, corporation, association, partnership, or individual, may, for the benefit of creditors and others interested in the estate or property so held in trust, disaffirm, treat as void, and resist all acts done, transfers and agreements made in fraud of the rights of any creditor, including themselves and others interested in any estate or property held by or of right belonging to any such trustee or estate; and every person who in fraud of the rights of creditors and others shall have received, taken, or in any manner interfered with the estate, property, or effects of any deceased person or insolvent corporation, asso-

ciation, partnership, or individual shall be liable, in the proper action, to the executors, administrators, receivers, or other trustees of such estate or property for the same, or the value of any property or effects so received or taken, and for all damages caused by such acts to any such trust estate.

FRAUDULENT SALES

That it shall be the duty of every person who shall bargain for or purchase any stock of goods, wares, or merchandise in bulk, for cash or credit, within the Districts of Columbia, to demand and receive from the vendor thereof, and if the vendor be a corporation then from a managing officer or agent thereof, at least five days before the consummation of such bargain or purchase and at least five days before paying or delivering to the vendor any part of the purchase price or consideration therefor, or any promissory note or other evidence of indebtedness therefor, a written statement, under oath, containing the names and addresses of all of the creditors of said vendor, together with the amount of indebtedness due or owing, or to become due or owing, by said vendor to each of such creditors, and if there be no such creditors, a written statement, under oath, to that effect; and it shall be the duty of such vendor to furnish such statement at least five days before any sale or transfer by him of any stock of goods, wares, or merchandise in bulk.

Sec. 2. That after having received from the vendor the written statement, under oath, mentioned in section one, the vendor shall, at least five days before the consummation of such bargain or purchase, and at least five days before paying or delivering to the vendor any part of the purchase price or consideration therefor, or any promissory note or other evidence of indebtedness for the same, in good faith notify or cause to be notified, personally or by wire or by registered letter, each of the creditors of the vendor named in said statement of the proposed purchase by him of such stock of goods, wares, or merchandise; and whenever any person shall purchase any stock of goods, wares, or merchandise in bulk, or shall pay the purchase price or any part thereof, or execute or deliver to the vendor thereof or to his order, or to any person for his use, any promissory note or other evidence of indebtedness for said stock, or any part thereof, without having first demanded and received from his vendor the statement, under oath, as provided in section one, and without also having notified or caused to be notified all of the creditors of the vendor named in such statement, as in this section prescribed, such purchase, sale, or transfer shall, as to any and all creditors of the vendor, be conclusively presumed fraudulent and void.

Sec. 3. That any sale or transfer of a stock of goods, wares, or merchandise out of the usual or ordinary course of the business or trade of the vendor, or whenever thereby substantially the entire business or trade theretofore conducted by the vendor shall be sold or conveyed, or attempted to be sold or conveyed, to one or more persons, shall be deemed a sale or transfer in bulk, in contemplation of this Act.

Sec. 4. That nothing contained in this Act shall apply to sales made by executors, administrators, receivers, or any public officer conducting a sale in his official capacity.

Sec. 5. That except as expressly provided in this Act, nothing therein contained, nor any Act thereunder shall change or affect the present rules of evidence or the present presumptions of law.

Sec. 6. That all Acts and parts of Acts inconsistent herewith be. and the same is hereby, repealed.

Act approved April 28, 1904 (33 Stat. L., pt. 1, p. 555).

CHAPTER THIRTY-ONE

GUARDIAN AND WARD

SEC. 1123. NATURAL GUARDIANS.—The father and mother shall be the natural guardians of the person of their minor children. If either dies or is incapable of acting, the natural guardianship of the person shall devolve upon the other: *Provided, however,* That in case of the death of either parent from whom said children shall inherit or take by devise or bequest, such parent may by deed or last will and testament appoint a guardian of the property of the children, subject to the approval of the proper court of the District of Columbia: *And provided further,* That nothing herein contained shall be held to limit or affect the power of a court of equity to appoint some other person guardian of such children when it shall be made to appear to said court that the welfare of said children requires it.

Act of June 1, 1896, section 8 (29 Stat. L. p. 193).

By the provisions of this section "the power of equity to guard the welfare of the child is preserved" * * * "Where it is desired to test the validity of the custody of a child, a writ of habeas corpus is the proper remedy by which to do it. If the validity of the custody is admitted, but it is believed that the welfare of the child demands that it should be changed, resort must be had to equity for the purpose of effecting the change." *Church v. Church*, 50 App. D. C. 237 (1921); 49 W. L. R. 66, *citing Slack v. Perrine*, 9 App. D. C. 128.

Parents' preferential claim may be lost by contract or forfeited by abandonment as well as by misconduct. *Beall v. Bibb*, 19 App. D. C. 311 (1902); 30 W. L. R. 138, *citing Wells v. Wells*, 11 App. D. C. 392; 26 W. L. R. 71.

See annotations to sections 975, 1150.

SEC. 1124. TESTAMENTARY GUARDIANS.—Every father or mother, whether of full age or not, when the other parent does not survive, may, by last will and testament, appoint a guardian of the person to have the care, custody, and tuition of his or her infant child, not being a married female; and if the person so appointed shall refuse the trust, said court may appoint another person in his place.

Act of June 1, 1896, section 9 (29 Stat. L., p. 193).

SEC. 1125. APPOINTMENT BY COURT.—If any infant shall have neither natural nor testamentary guardian, a guardian of the person may be appointed by the probate court in its own discretion or on the application of any next friend of such infant.

See section 1127.

SEC. 1126. WHEN GUARDIANSHIP CEASES.—The natural guardianship or the appointive guardianship of the person aforesaid shall cease, in the case of a male infant when he is twenty-one years of age, and in the case of a female infant when she is eighteen years of age or marries.

SEC. 1127. WHEN GUARDIAN OF ESTATE IS APPOINTED BY COURT.—Subject to the provisions of the preceding sections of this chapter,

whenever land shall descend or be devised to any infant under twenty-one years of age, or such infant shall be entitled to a distributive share of the personal estate of an intestate, or to a legacy or bequest under a last will, or shall acquire any real or personal property by gift or purchase, the said court may appoint a guardian of said infant's estate; and if there shall be a guardian of the person of such infant the guardian of the estate so appointed may be the same or a different person. The said appointment may be made at any time after the probate of the will or the grant of administration where the infant is entitled as devisee, legatee, or next of kin.

Act of Maryland of 1798, ch. 101, subch. 12, sec. 1; Comp. Stat. D. C., p. 252, sec. 4.

SEC. 1128. PREFERENCES.—Whenever it shall be necessary for the court to appoint a guardian of the infant's estate, as aforesaid, the father, if living, or, if he be dead, then the mother, if living, or, if the infant be a married female her husband, shall have the preference over other persons, unless the infant be over fourteen years of age, as hereinafter directed: *Provided*, That in the judgment of the court the parent or husband so entitled shall be a suitable person to have the management of the infant's estate.

SEC. 1129. HUSBAND OR PARENT ENJOINED.—On the application of any friend of an infant entitled to real or personal estate, or in the exercise of its own discretion, the court may enjoin any parent or husband or testamentary guardian of such infant from interfering with said infant's estate without being appointed and giving bond as guardian of such estate.

SEC. 1130. CONSENT OF INFANT.—When it shall be necessary to appoint a guardian, either of the person or the estate, of an infant, the infant shall, if practicable, be brought before the court, and, if over the age of fourteen years, shall be entitled to select and nominate his or her guardian; and if a guardian shall have been appointed before the infant has attained the age of fourteen years, the said infant, upon arriving at said age, may select a new guardian, notwithstanding the appointment before made: *Provided, however*, That the court shall, in all cases, approve the character and competency of the guardian selected by the infant, and such guardian shall be under the same obligations and discharge the same duties as if selected by the court; and whenever, after a guardian of the estate has been previously appointed, the infant shall select a new guardian upon arriving at the age of fourteen years, and said new selection is approved by the court, and the person so selected is duly appointed and qualified, the guardian previously appointed shall settle his final account and turn over his ward's estate to the newly appointed guardian.

See section 155.

R. S. D. C., secs. 946 et seq.; Comp. Stat. D. C., p. 256, sec. 229.

SEC. 1131. BOND OF GUARDIAN.—Every guardian appointed by the court, except corporations authorized to act as guardians, before entering upon or taking possession of or interfering with the estate of the infant, shall execute a bond to the United States in such penalty and with such surety or sureties as the court shall approve, to be recorded and to be liable to be put in suit for the use of any person interested, with the following condition:

"The condition of the above obligation is such that if the above bounden -----, as guardian to -----, shall faithfully account to the court, as required by law, for the management of the property and estate of the infant under his care, and shall also deliver up said property agreeably to the order of the court or the directions of law, and shall in all respects perform the duty of guardian to the said ----- according to law, then the above obligation shall cease; it shall otherwise remain in full force and virtue."

See section 151.

R. S. D. C., sec. 938; Comp. Stat. D. C., p. 255, sec. 21.

SEC. 1132. ONE BOND FOR SEVERAL WARDS.—Where the same person is guardian to any number of persons entitled to shares of the same estate the court may accept one bond instead of separate bonds for each ward, and said bond shall be liable to be put in suit for the use of all or either of the wards as fully as separate bonds might be.

SEC. 1133. POSSESSION TO GUARDIAN.—On the execution of his bond, as required as aforesaid, the guardian shall be entitled to an order of the court directing the real and personal estate of the ward to be delivered into his possession, and all legacies and distributive shares to which the ward may be entitled to be paid or delivered to him whenever they shall be properly payable or distributable according to law.

SEC. 1134. INVENTORY.—Every guardian, within three months after the execution and approval of his bond, shall return to the court, under oath, an inventory of the real and personal estate of his ward and of the probable annual income thereof, and the court may direct the said estate to be appraised and the annual income thereof to be ascertained by two competent persons, to be appointed by the court, who shall report their appraisement and finding under oath.

SEC. 1135. ACCOUNTS.—It shall be the duty of the guardian to manage the estate for the best interests of the ward, and once in each year, or oftener if required, he shall settle an account of his trust, under oath. He shall account for all profit and increase of his ward's estate and the annual value thereof, and shall be allowed credit for taxes, repairs, improvements, expenses, and commissions not exceeding ten per centum of the principal of the personal estate and on the annual income of the estate, and shall not be answerable for any loss or decrease sustained without his fault; and the court shall determine the amounts to be annually expended in the maintenance and education of the infant, regard being had to his future condition and prospects in life; and the court, if it shall deem it advantageous to the ward, may allow the guardian to exceed the income of the estate and to make use of the principal and sell the same or part thereof, under its order, as hereinbefore provided in subchapter three of chapter one; but no guardian shall sell any property of his ward without an order of the court previously had therefor.

Act of Maryland of 1798, ch. 101, subch. 12, secs. 9, 10; Comp. Stat. D. C., p. 254, secs. 12, 13.

See section 165.

A pledge by the guardian of the ward's property (without authority of the court) is void; no title passes thereunder. *Easterling v. Horning*, 30 App D. C. 225 (1908); 36 W. L. R. 53.

SEC. 1136. SALE OF REALTY.—Whenever any guardian shall think that the interests of his ward will be promoted by a sale of his real estate for the purpose of reinvesting the proceeds in other property or securities, he may make application therefor to the court, and such proceedings shall be had thereupon as directed in subchapter three of chapter one, aforesaid.

See sections 156 et seq.

Morse v. U. S. use of *Hine*, 29 App. D. C. 433 (1907); 35 W. L. R. 334, reversed 218 U. S. 493.

SEC. 1137. ALLOWANCES.—Any allowance which may be made to a guardian for the clothing, support, maintenance, education, or other expenses incurred for the ward or his estate, before said guardian shall have given bond or been appointed, shall have the same effect and operation in law as if the same had been made subsequently to the appointment of said guardian and his giving bond.

SEC. 1138. SURETY.—If any surety of a guardian, setting forth by petition that he apprehends himself to be in danger of suffering by said suretyship, shall pray to be relieved, the court, after service of a summons on the guardian to answer the petition, may order him to give counter security for the indemnity of the original surety, or to deliver the ward's estate into the hands of the surety or of some other person; in either of which cases the person into whose hands the ward's estate shall be delivered shall be required to give sufficient security for the proper management and application of the same, and such further order may be passed for the relief of the petitioner as may seem just.

See section 154.

R. S. D. C., sec. 945; Comp. Stat. D. C., p. 256, sec. 28.

SEC. 1139. FINAL ACCOUNT.—On the arrival of any ward at the age of twenty-one years the guardian shall exhibit a final account of his trust to the court, and shall deliver up, agreeably to the court's order, to the ward all the property of said ward in his hands, including bonds and other securities, and on his failure so to do his bond may be put in suit in the name of the United States for the use of the party interested, and he may be attached, as herein elsewhere provided.

Act of Maryland of 1798, ch. 101, subch. 12, sec. 14; Comp. Stat. D. C., p. 255, sec. 18.

As to charging guardian with interest on funds in his possession uninvested, see *Corcoran v. Renahan*, 24 App. D. C. 411 (1904); 32 W. L. R. 806. As to necessity for vouchers, see *ib.*

"A father is bound to support his own children, and he can not, as a general principle, when guardian, claim the right to use the income of their property for that purpose, much less to disturb the principal. But there may be circumstances where both income and principal may be applied to such purpose." *Rhodes v. Robie*, 9 App. D. C. 305 (1896); 24 W. L. R. 729.

SEC. 1140. HUSBAND AS GUARDIAN.—Whenever any female infant, to whom a guardian of her estate has been appointed, shall marry she may select her husband as the guardian of her said estate, with the approval of the court, and after he is duly appointed and qualified by giving bond, as is required in other cases, the powers of the guardian previously appointed shall cease, and he shall settle his final account

and turn over his ward's estate to her husband, agreeably to the order and directions of the court.

See section 393.

SEC. 1141. NONRESIDENT INFANT OR LUNATIC.—Whenever an infant or lunatic residing without the District is entitled to property in the District or to maintain any action therein, a general guardian or committee of his estate, appointed by a court of competent jurisdiction in the State or Territory where said infant or lunatic resides, or any person at the request of said guardian or committee, may apply to the court by petition for ancillary letters as such guardian or committee. Said petition must be under oath and be accompanied with duly certified copies of so much of the record and proceedings as shows the appointment of such guardian or committee and that he has given a sufficient bond to account for all property and money that may come into his hands by virtue of the authority hereby conferred. The court may thereupon issue to such guardian or committee ancillary letters as such guardian or committee, without citation, or may cite such persons as it may think proper to show cause why the said application should be refused; and the said court shall require from such person or persons the security required by law in like cases from a resident guardian or committee.

Act approved March 3, 1905 (33 Stat. L., pt. 1, p. 1006), repealing 31 Stat. L., pt. 1, p. 1189, as amended 32 Stat. L., pt. 1, p. 52.

R. S. D. C., secs. 951-956; Comp. Stat. D. C., p. 256, secs. 34-39.

SEC. 1142. SUITS BY ANCILLARY GUARDIAN.—Upon the granting of said ancillary letters the said guardian shall be entitled to institute and prosecute to judgment any action in the courts of the District, to take possession of all property of his said ward, and collect and receive all moneys belonging and due to him therein, to give full receipt and acquittances for debts and to release all claims, liens, and mortgages to him belonging, on property in said District, in the same manner as if his authority had been originally conferred by the supreme court of said District: *Provided*, That said guardian shall be required to give security for the costs which may accrue in any action brought by him, in the same manner as other nonresidents bringing suit in the courts of said District.

CHAPTER THIRTY-TWO

HABEAS CORPUS

SEC. 1143. HOW OBTAINED.—Any person committed, detained, confined, or restrained from his lawful liberty within the District, under any color or pretense whatever, or any person in his or her behalf, may apply by petition to the supreme court of the District, or any justice thereof, for a writ of habeas corpus, to the end that the cause of such commitment, detainer, confinement, or restraint may be inquired into; and the court or the justice applied to, if the facts set forth in the petition make a prima facie case, shall forthwith grant such writ, directed to the officer or other person in whose custody or keeping the party so detained shall be, returnable forthwith before said court or justice.

See section 68.

See section 930 and annotations relative to use of habeas corpus in extradition proceedings.

See annotations to sections 975 and 1150 as to custody of children.

Where it appears that the Juvenile Court had complete jurisdiction of the person of the defendant and of the subject matter, and had power to impose the sentence complained of, the proceeding can not be reviewed by habeas corpus. *Posey v. Zinkham*, 47 App. D. C. 293 (1918); 46 W. L. R. 99. See also *U. S. v. Davis*, 18 App. D. C. 280 (1901); 29 W. L. R. 382.

In a habeas corpus proceeding to determine the custody of a child the court is without authority to direct that the custody of the child shall be committed to one not a party to the proceeding. *Goldsmith v. Valentine*, 35 App. D. C. 299 (1910); 38 W. L. R. 444. On the perfecting of an appeal the lower court is ousted of its jurisdiction, and can not thereafter direct a transfer in custody. *Ib.*, distinguishing *Slack v. Perrine*, 9 App. D. C. 128; 24 W. L. R. 374 (writ of error dismissed, 164 U. S. 452).

Habeas corpus is a civil, not a criminal, proceeding, and is administered by a court of common law. *Goldsmith v. Valentine*, 36 App. D. C. 63 (1910); 38 W. L. R. 783.

"The writ of habeas corpus is in the nature of the writ of error which brings up the body of the prisoner with the cause of commitment. It can not serve as a writ of error or as an appeal to enable us to reexamine the judgment in the police court, as the Supreme Court said upon a like petition: 'If this judgment be obligatory, no court can look behind it. If it be a nullity, the officer who obeys it is guilty of false imprisonment.' *Ex parte Watkins* 3 Pet. 202." *Harris v. Nixon*, 27 App. D. C. 94 (1906); 34 W. L. R. 179; certiorari denied, 201 U. S. 645. See also *Harris v. Lang*, 27 App. D. C. 84 (1906); 34 W. L. R. 176. *Elliott v. U. S.*, *infra.*; *U. S. v. Davis*, 18 App. D. C. 280 (1901); 29 W. L. R. 382.

Writ must be made returnable before the justice by whose order it was issued. *Elliott v. U. S.*, 23 App. D. C. 456 (1904); 32 W. L. R. 293. Habeas corpus will lie to release attorney who has been sentenced to imprisonment for contempt for failing, as a witness, to answer a question involving the disclosure of privileged communications with a client. *Ib.*

D. C. Supreme Court has no jurisdiction "to inquire into the grounds of the detention of any or all persons who, it may be alleged, are unlawfully restrained of their liberty by officers of the Navy or Army, in any State, Territory, or outlying possession of the United States, merely because the respective heads of the Navy and War Departments of the Government may be found and personally served with process within the District of Columbia."

McGowan v. Moody, 22 App. D. C. 148 (1903) ; 31 W. L. R. 371. As to relation of code provisions to common law, see *ib.*

Quaere, whether court would have jurisdiction in a case in which the party affected had been removed to another jurisdiction to defy the process of the court, and the detention was continued by the same wrongdoer, who remained within the reach of the court. *Id.*

As to use of habeas corpus to test validity of order of committing magistrate committing one charged with an alleged offense of forgery to await the consideration of the grand jury, see *Palmer v. Colladay*, 18 App. D. C. 426 (1901) ; 29 W. L. R. 532.

See also *Leonard v. Rodda*, 5 App. D. C. 256 ; *Ex parte Dries*, 3 App. D. C. 165 (1894) ; 22 W. L. R. 301.

SEC. 1144. HOW SERVED.—The said writ shall be served by delivering it to the officer or other person to whom it is directed, or by leaving it at the prison or place at which the party suing it out is detained ; and such officer or other person shall forthwith, or within such reasonable time as the court or justice shall direct, make return of the writ and cause the person detained to be brought before the court or justice, according to the command of the writ, and shall likewise certify the true cause of his detainer or imprisonment, if any, and under what color or pretense such person is confined or restrained of his liberty.

SEC. 1145. EVASION.—On any application for a writ of habeas corpus, if probable cause be shown for believing that the person charged with confining or detaining the person applying or on whose behalf the application is made is about to remove the person so detained from the place where he may then be, for the purpose of evading any writ of habeas corpus or for other purposes, or that he would evade or not obey any such writ, the court or justice shall insert in the writ a clause commanding the marshal to serve the writ on the person to whom it is directed and cause said person immediately to be and appear before the court or justice, together with the person so confined or detained, and it shall thereupon be the duty of the marshal immediately to carry the person charged with the detention, together with the person detained, before the court or justice, and said court or justice shall proceed to inquire into the matter.

See annotations to section 1143.

SEC. 1146. REFUSAL TO PRODUCE.—If any officer or other person to whom a writ of habeas corpus may be directed shall neglect or refuse to make return thereof, or to bring the body of the person detained, according to the command of the writ, he shall forfeit to the person detained the sum of five hundred dollars, and besides shall be liable to attachment and punishment as for a contempt.

See annotations to section 1143.

SEC. 1147. COPY OF COMMITMENT.—Any person committed or detained, or any person in his behalf, may demand a true copy of the warrant of commitment or detainer, and any officer or other person detaining him who shall refuse or neglect to deliver to him a true copy of the warrant of commitment or detainer, if any there be, within six hours after the demand, shall forfeit to the party so detained the sum of five hundred dollars.

See annotations to section 1143.

SEC. 1148. INQUIRY INTO CAUSE OF DETENTION.—On the return of the writ of habeas corpus and the production of the person detained the court or justice shall immediately inquire into the legality and propriety of such confinement or detention, and if it shall appear that such person is detained without legal warrant or authority, he shall immediately be released or discharged; or if the court or justice shall deem his detention to be lawful and proper, he shall be remanded to the same custody, or, in a proper case, admitted to bail, if he be confined on a charge of a bailable criminal offense; and if he be bailed, the court or justice shall require a sufficient bond or recognizance to answer in the proper court, and transmit the same to said court.

See annotations to section 1143.

SEC. 1149. TRAVERSING RETURN.—Any person at whose instance or in whose behalf a writ of habeas corpus has been issued may traverse the return thereto, or plead any matters showing that there is not a sufficient legal cause for his confinement or detention, and the court or justice may issue process for witnesses or for the production of papers, which shall be served and enforced in like manner as similar process issued in a cause depending in court, if the court or justice shall be satisfied of the materiality of the testimony proposed to be adduced.

See annotations to section 1143.

SEC. 1150. RIGHT OF PARENT, GUARDIAN, OR HUSBAND.—Any person entitled to the custody of another person, unlawfully confined or detained by a third person, as a parent, guardian, committee, or husband, entitled to the custody of a minor child, ward, lunatic, or wife, upon application to the court or a justice as aforesaid, and showing just cause therefor, under oath, shall be entitled to a writ of habeas corpus, directed to the person confining or detaining as aforesaid, requiring him forthwith to appear and produce before the court or justice the person so detained, and the same proceedings shall be had in relation thereto as hereinabove authorized, and the court or justice, upon hearing the proofs, shall determine which of the contesting parties is entitled to the custody of the person so detained, and commit the custody of said person to the party legally entitled thereto.

See annotations to sections 975, 1123, 1143.

When it appears that an infant is in the custody of the mother, under the order of a court having jurisdiction, habeas corpus will not lie at the instance of the father. *Church v. Church*, 50 App. D. C. 237 (1921); 49 W. L. R. 66.

"The judgment of a court touching the custody of a minor child in a divorce suit is 'ordinarily not res judicata, either in the same court or that of a foreign jurisdiction, except as to facts before the court at the time of the judgment.'" and a foreign decree affecting the custody of a child will not bar the courts of this jurisdiction in investigating, on habeas corpus, "things which have transpired since affecting the welfare of the child, and from changing, if necessary, because of those things, the child's custody." *Heavrin v. Spicer*, 49 App. D. C. 337 (1920); 48 W. L. R. 455. See also *Wedderburn v. Wedderburn*, 46 App. D. C. 149 (1917); 45 W. L. R. 152.

Habeas corpus confers no jurisdiction to appoint guardians of infants, and the court "in such a proceeding, in determining merely the question of the right of custody as between the parties to the action, will look to the welfare of the child." *Halback v. Hill*, 49 App. D. C. 127 (1919); 48 W. L. R. 51, *citing Seeley v. Seeley*, 30 App. D. C. 191, and *Goldsmith v. Valentine*, 36 App. D. C. 63; 38 W. L. R. 444.

An appeal will lie from an order awarding the custody of a child, and appellant is entitled to give a supersedeas bond. *Nuckols v. Nuckols*, 38 App. D. C. 441 (1912); 40 W. L. R. 201, *citing Goldsmith v. Valentine, supra*.

CHAPTER THIRTY-THREE

HUSBAND AND WIFE

SEC. 1151. WIFE'S PROPERTY EXEMPT FROM HUSBAND'S DEBTS.—All the property, real, personal, and mixed, belonging to a woman at the time of her marriage, and all such property which she may acquire or receive after her marriage from any person whomsoever, by purchase, gift, grant, devise, bequest, descent, in the course of distribution, by her own skill, labor, or personal exertions, or as proceeds of a judgment at law or decree in equity, or in any other manner, shall be her own property as absolutely as if she were unmarried, and shall be protected from the debts of the husband and shall not in any way be liable for the payment thereof: *Provided*, That no acquisition of property passing to the wife from the husband after coverture shall be valid if the same has been made or granted to her in prejudice of the rights of his subsisting creditors.

See section 1120.

Act of June 1, 1896, section 1 (29 Stat. L. p. 193) ; R. S. D. C. sections 727-730; Comp. Stat. D. C., p. 274, sections 23-26. For collation of various married woman's acts see *Bronson v. Brady*, 28 App. D. C. 250 (1906) ; 34 W. L. R. 704. A judgment against a married woman, rendered by another State, on a contract by which she guaranteed the indebtedness of her husband, will be enforced in this District, notwithstanding section 1151, exempting her from liability for the payment of her husband's debts. *Heiston v. National City Bank*, 51 App. D. C. 394 (1922) ; 50 W. L. R. 262.

As to effect of married woman's act on equitable estates for sole use of married woman see *Bergland v. Owen*, 48 App. D. C. 26 (1918) ; 46 W. L. R. 290.

As to effect of married woman's act on estates by entireties see *Flaherty v. Columbus*, 41 App. D. C. 525 (1914) ; 42 W. L. R. 149.

A married woman may contract with her husband. *Santmyer v. Santmyer*, 48 App. D. C. 310 (1919) ; 47 W. L. R. 34, *citing* *Bronson v. Brady*, 28 App. D. C. 250; 34 W. L. R. 704. As to effect of divorce on prior agreement for separation and support, see *ib.*

The power of a married woman to contract under this section must be taken in connection with the limitation of section 1155. *Waters v. Pearson*, 39 App. D. C. 10 (1912) ; 40 W. L. R. 322.

See also *Thompson v. Thompson*, 218 U. S. 611 (1910), affirming 31 App. D. C. 557.

Dobbins v. Thomas, 26 App. D. C. 157 (1905) ; 33 W. L. R. 743.

McCarthy v. McCarthy, 20 App. D. C. 195 (1902) ; 30 W. L. R. 419; writ of error dismissed in 189 U. S. 515.

Wills v. Jones, 13 App. D. C. 482 (1898) ; 27 W. L. R. 19.

McCormick v. Hammersley, 1 App. D. C. 313 (1893) ; 21 W. L. R. 775.

Thyson v. Foley, 1 App. D. C. 182 (1893) ; 21 W. L. R. 637.

SEC. 1152. HUSBAND MAY CONVEY DIRECTLY TO WIFE.—Whenever any interest or estate of any kind in any property, real, personal, or mixed, situate, lying, or being within this District, has been or shall hereafter be sold, conveyed, assigned, mortgaged, leased, transferred, or delivered by any husband directly or indirectly to his wife, and has been or shall hereafter be subsequently sold, conveyed, assigned, mortgaged, leased, transferred, or delivered by such wife and hus-

band during their coverture, or hereafter by such wife solely or by such wife after such coverture has terminated, or shall hereafter be devised or bequeathed by such wife during such coverture or after such coverture has terminated, the fact of such previous sale, conveyance, assignment, mortgage, lease, or delivery by such husband, directly or indirectly, to his wife shall not hereafter be deemed or taken, at law or in equity, to have given, preserved, or reserved, nor to give, preserve, or reserve, to any subsisting creditor of such husband, by reason of any debt or obligation, claim, or demand whatsoever, any other or greater right, lien, or cause of action against such interest or estate, or against any third person, his heirs, executors, administrators, or assigns, than such creditors would have had in case such interest or estate had been sold, conveyed, assigned, mortgaged, leased, transferred or delivered, or devised, or bequeathed by such husband directly to such third person. And the fact of such previous sale, conveyance, assignment, mortgage, lease, or delivery by such husband directly or indirectly to his wife, or the recital thereof in any instrument of writing whatever, shall not hereafter be deemed or taken, at law or in equity, to give or impart nor to have given or imparted notice to any third person, his heirs, executors, administrators, or assigns of the existence or of the possibility or probability of the existence of any subsisting creditor or creditors of such husband.

See annotations to section 1151.

SEC. 1153. NO TRUSTEE NECESSARY.—It shall not be necessary for a married woman to have a trustee to secure to her the sole and separate use of her property; but if she desires it she may make a trustee by deed, or she may apply to a court of equity and have a trustee appointed, in which appointment the uses and trusts for which the trustee holds the property shall be declared.

See annotations to section 1151.

SEC. 1154. PROPERTY OF WIFE.—Married women shall hold all their property, of every description, for their separate use as fully as if they were unmarried, and shall have power to dispose of the same by deed, mortgage, lease, will, gift, or otherwise, as fully as if they were unmarried: *Provided*, That no disposition of her real or personal property, or any portion thereof, by deed, mortgage, bill of sale, or other conveyance, shall be valid if made by a married woman under twenty-one years of age.

Act of June 1, 1896, section 2 (29 Stat. L. p. 193); R. S. D. C., section 728.

The married woman's Act does not abolish estates by curtesy; but "the act unquestionably gives the married woman the power to destroy it either by conveyance of her estate by deed or by the devise of it in her will." *Balster v. Cadick*, 29 App. D. C. 405 (1907); 35 W. L. R. 275, citing *Zeust v. Staffan*, 16 App. D. C. 141, 147.

Under this section a wife may transfer title to a promissory note made by the husband and payable to her order, so as to enable her endorsee to maintain an action against the husband. *Bronson v. Brady*, 28 App. D. C. 250 (1907); 34 W. L. R. 704.

In construing section 728 of the R. S. D. C. it was said: "The general rule is perfectly well settled that, where a statute is of doubtful meaning and susceptible upon its face of two constructions the court may look into prior and contemporaneous acts, the reasons which induced the act in question, the mischiefs intended to be remedied, the extraneous circumstances, and the purpose intended to be accomplished by it, to determine its proper construction.

But where the act is clear upon its face, and when standing alone it is fairly susceptible of but one construction, that construction must be given to it." *Hamilton v. Rathbone*, 175 U. S. 414 (1899), *reversing* 9 App. D. C. 48.

SEC. 1155. POWER OF WIFE TO TRADE, AND TO SUE AND BE SUED.—Married women shall have power to engage in any business, and to contract, whether engaged in business or not, and to sue separately upon their contracts, and also to sue separately for the recovery, security, or protection of their property, and for torts committed against them, as fully and freely as if they were unmarried; contracts may also be made with them, and they may also be sued separately upon their contracts, whether made before or during marriage, and for wrongs independent of contract committed by them before or during their marriage, as fully as if they were unmarried, and upon judgments recovered against them execution may be issued as if they were unmarried; nor shall any husband be liable upon any contract made by his wife in her own name and upon her own responsibility, nor for any tort committed separately by her out of his presence without his participation or sanction: *Provided*, That no married woman shall have power to make any contract as surety or guarantor, or as accommodation drawer, exceptor [*sic*], maker, or indorser.

Act of June 1, 1896, sections 3-7 (29 Stat. L. p. 193).

See *Heiston v. Bank*, 51 App. D. C. 394, annotated under section 1151.

A married woman, sued as principal on a sealed instrument, may show that she was in fact contracting as a surety in violation of section 1155, *Waters v. Pearson*, 39 App. D. C. 10 (1912); 40 W. L. R. 322. "The statute (relating to contracts of suretyship) declares a rule of public policy and its object is to be executed by courts of law as well as equity." *Ib.*

Contract by married woman to indemnify and save harmless another from the default of an agent is "clearly obnoxious to section 1155 of the code." *Fisk Rubber Co. v. Muller*, 42 App. D. C. 49 (1914); 41 W. L. R. 544.

Purpose in enactment of statute: *Thompson v. Thompson*, 218 U. S. 611 (1910), affirming 31 App. D. C. 557; 36 W. L. R. 413; affirmed in 218 U. S. 611. The statute does not give the wife a right of action to recover damages from her husband for an assault committed by him upon her.

Wife may sue separately for tort committed against her. *Dodge v. Rush*, 28 App. D. C. 149 (1906); 34 W. L. R. 501 (*crim. con.*).

Dobbins v. Thomas, 26 App. D. C. 157 (1905); 33 W. L. R. 743, see also *Dobbins v. Thomas*, 30 App. D. C. 511 (1908); 36 W. L. R. 470.

Under section 3 of the act of June 1, 1896 (*supra*), a married woman could enter into a partnership. *Norwood v. Francis*, 25 App. D. C. 463 (1905); 33 W. L. R. 455. As to right of wife to enter into partnership with husband, under act of 1896, see *ib.*

Prior to code, see also *Richards v. Bippus*, 18 App. D. C. 293 (1901); 29 W. L. R. 414. *Capital Traction Co. v. Rockwell*, 17 App. D. C. 369 (1901); 29 W. L. R. 41 (may sue in tort for personal injuries without joining husband under act of 1896). *Wills v. Jones*, 13 App. D. C. 482 (1898), 27 W. L. R. 19. *Sonneman v. Loeb*, 11 App. D. C. 143 (1897); 25 W. L. R. 452.

SEC. 1156. CONTRACTS OF WIFE.—Every contract made by a married woman which she has the power to make shall be deemed to be made with reference to her estate which is made her separate estate by this chapter, and also her equitable separate estate, if any she has, as a source of credit to the extent of her power over the same, unless the contrary intent is expressed in the contract.

This section "expressly governing contracts only, which the married woman has the power to make, we must look necessarily to section 1155 to determine the existence of the power." *Waters v. Pearson*, 39 App. D. C. 10 (1912); 40 W. L. R. 322.

A contract clearly within the power of a married woman to make, "must be deemed to have been made with reference to her separate estate, there

being no contrary intent expressed. She is therefore liable to be sued separately thereon." *Dobbins v. Thomas*, 26 App. D. C. 157 (1905); 33 W. L. R. 743. See also *Dobbins v. Thomas*, 30 App. D. C. 511 (1908); 36 W. L. R. 470.

See section 1177.

SEC. 1157. INFANT FEME COVERT.—In case any married woman entitled to a separate estate as aforesaid shall be an infant under twenty-one years of age, she shall be under the same disabilities in regard thereto as other infants, except as herein elsewhere provided, and a guardian of said estate shall be appointed.

SEC. 1158. DOWER.—A widow shall be entitled to dower in lands held by equitable as well as legal title in the husband at any time during the coverture, whether held by him at the time of his death or not, but such right of dower shall not operate to the prejudice of any claim for the purchase money of such lands or other lien on the same.

See sections 86-90, 149, 1172, 1176.

Reilly v. Cullinane, 53 App. D. C. 17 (1923).

"Prior to 1896, there was no statute giving a wife dower in the equitable estate of her husband, and she was not entitled to any under the common law." *Waggaman v. Dulany*, 48 App. D. C. 14 (1918); 46 W. L. R. 293. Equitable lien held superior to dower right, *ib.*, *distinguishing* *Berl v. Dulany*, 42 App. D. C. 121.

The common-law rule that a widow is not entitled to dower in lands to which the husband has a remainder in fee if the remainderman predecease the life tenant is not modified by section 1158. *Talty v. Talty*, 40 App. D. C. 587 (1913); 41 W. L. R. 436.

Prior to code, see *Wilkes v. Wilkes*, 18 App. D. C. 90 (1901); 29 W. L. R. 261. *Sis v. Boarman*, 11 App. D. C. 116 (1897); 25 W. L. R. 431. *Balt. & Pot. R. R. Co. v. Taylor*, 6 App. D. C. 259 (1895); 23 W. L. R. 324. *Barbour v. Hickey*, 2 App. D. C. 207 (1894); 22 W. L. R. 57. *Follansbee v. Follansbee*, 1 App. D. C. 326 (1893); 21 W. L. R. 761.

SEC. 1159. ESTATE BY THE CURTESY.—On the death of any married woman owning real estate in fee simple and intestate thereof, if there has been a child born of the marriage capable of inheriting said property, the husband surviving her shall be entitled to an estate by the curtesy therein, whether the wife's estate be legal or equitable and whether the wife's seizin be in deed or in law only.

Devise to husband held in lieu of curtesy. *Gibson v. Gibson*, 53 App. D. C. 380 (1923); 51 W. L. R. 711.

Upon death of married woman leaving issue, and intestate, the husband's initiate estate as tenant by the curtesy becomes consummate, "which entitled him to claim the possession at her death, and to maintain an action therefor, to the exclusion of her heirs at law during his life." *Welch v. Lynch*, 30 App. D. C. 122 (1907); 35 W. L. R. 398, *citing* *Frey v. Allen*, 9 App. D. C. 400 (1896); 25 W. L. R. 39.

A married woman's devise of "all my property" carries the absolute estate freed of any right of the husband as tenant by the curtesy. *Balster v. Cadick*, 29 App. D. C. 405 (1907); 35 W. L. R. 275.

Prior to code, see *Zuest v. Staffan*, 16 App. D. C. 141 (1900); 28 W. L. R. 271. *Rhodes v. Robie*, 9 App. D. C. 305 (1896); 24 W. L. R. 729. *Uhler v. Adams*, 1 App. D. C. 392 (1893); 21 W. L. R. 803.

[SEC. 1160. ADMINISTRATION OF WIFE'S ESTATE.—On the death of any married woman owning real or personal estate and intestate thereof, her said estate shall be administered on as if she had been unmarried, and in the appointment of her administrator her husband shall be entitled to be preferred. After payment of her debts her said personal estate shall be the property of her husband.]

Repealed by act of April 19, 1920 (41 Stat. L., pt. 1, p. 567).

As to construction of original section, see *Calvert v. Taxicab Co.*, 48 App. D. C. 119 (1918); 46 W. L. R. 342. *Emery v. Emery*, 45 App. D. C. 576 (1917). *Miller-Shoemaker Co. v. Sturgeon*, 31 App. D. C. 406 (1908); 36 W. L. R. 350.

McCarthy v. McCarthy, 20 App. D. C. 195 (1902); 30 W. L. R. 419; writ of error dismissed, 189 U. S. 515.

See also Ferguson v. Washington & G. R. R. Co., 6 App. D. C. 525 (1895); 23 W. L. R. 407.

SEC. 1161. INSURANCE OF HUSBAND'S LIFE.—Any married woman, by herself and in her name, or in the name of any third person, with his assent, as her trustee, may insure or cause to be insured for her sole use, the life of her husband for any definite period or for the term of his natural life; and any husband may cause his own life to be insured for the sole use of his wife, and may also assign any policy of insurance upon his own life to his wife for her sole use; and in case of the wife surviving her husband the sum or net amount of such insurance becoming due and payable by the terms of the insurance shall be payable to her for her own use, free from the claims of the representatives of her husband or any of his creditors.

SEC. 1162. INSURANCE NOT LIABLE FOR HUSBAND'S DEBTS.—All policies of life insurance upon the life of any person which may hereafter mature, and which have been or shall be taken out for the benefit of or bona fide assigned to the wife or children of or any relative dependent upon such person, or any creditor, shall be vested in such wife or children or other relative or creditor, free and clear from all claims of the creditors of such insured person.

SEC. 1163. INSURANCE PAYABLE ON DEATH OF WIFE TO CHILDREN.—If the wife shall die before her husband, the amount of such insurance may be payable after her death to the children or descendants for their use, and to their guardian if under age; and if there be no children or descendants of the wife living at the time of her death, to her legal representatives.

SEC. 1164. RECEIPT OF MARRIED WOMAN.—The receipt of any married woman for the payment of money deposited by her before or after marriage shall be a valid discharge to any individual or corporation making such payment: *Provided*, That nothing contained in this section shall prevent any creditor of the husband from attaching the same or restraining the payment by injunction if the deposit was made in fraud of his creditors.

SEC. 1165. LUNATIC, INSANE, OR PERMANENTLY ABSENT WIFE.—Where any married woman is a lunatic or insane, and has been so found upon inquisition, and the said finding remains in force, or where any married woman has been absent or unheard of for seven years, the husband of such lunatic or insane or absent person may grant and convey by his separate deed, whether the same be absolute or by way of lease or mortgage, as fully as if he were unmarried, any real estate which he may have acquired since the finding of such inquisition or since the beginning of such absence.

See section 115b.

SEC. 1166. DEBTS OF WIFE BEFORE MARRIAGE.—No husband shall be liable in any manner for any debts of his wife contracted or for any claims or demands of any kind against her arising prior to marriage, but she and her property shall remain liable therefor in the same manner as if the marriage had not taken place.

Act of June 1, 1896, section 7 (29 Stat. L. pt. 1, p. 193).

[SEC. 1167. LEGAL PROCEEDINGS AGAINST WIFE.—Proceedings at law or in equity, according to the nature of such debts, claims, or demands, may be

taken against such married woman, notwithstanding her coverture, in her married name, joining her husband therein as defendant if he be within the District; but no judgment or decree shall pass against the husband or his estate, but such judgment or decree shall be passed against the wife only; and it shall operate only upon her estate held and owned by her prior or subsequent to said marriage.】

Repealed by act of June 30, 1902 (32 Stat. L. pt. 1, p. 542).

【SEC. 1168. POWER OF WIFE TO APPOINT ATTORNEY.—Any married woman against whom any proceeding may be taken under the two preceding sections shall have power to appoint an attorney at law to act for her in such proceeding.】

Repealed by act of June 30, 1902 (32 Stat. L. pt. 1, p. 542).

SEC. 1169. PROCEDURE TO EJECT MARRIED WOMAN WHO IS A TENANT.—In all cases in which a married woman is or shall hereafter be a tenant of real estate in this District, and has defaulted in the payment of rent therefor or has made other default, it shall be lawful for the landlord to make such reentry or bring such action for recovery of the demised premises as he or she might do if the lessee were a feme sole and had contracted for the payment of said rents or the performance of other acts and to suffer such reentry to be made upon default therein.

SEC. 1170. MARRIED WOMEN MAY MAKE COVENANT RUNNING WITH THE LAND.—In all deeds hereafter made to married women of real estate or chattels real it shall be competent for the grantee or lessee to bind herself and her assigns by any covenant running with or relating to said real estate or chattels real the same as if she were a feme sole.

SEC. 1171. EQUITABLE SEPARATE ESTATE.—Nothing contained in the preceding sections of this chapter shall be construed to prevent the creation of equitable separate estates. Said estates shall be held according to the provisions of the respective settlements thereof and shall be subject to and governed by the rules and principles of equity applicable to such estates.

Bergland v. Owen, 48 App. D. C. 26 (1918); 46 W. L. R. 290, citing *Fields v. Gwynn*, 19 App. D. C. 99, 29 W. L. R. 834; *McCormick v. Hammersley*, 1 App. D. C. 313 (1893), 21 W. L. R. 775.

SEC. 1172. DEVISE IN LIEU OF DOWER.—Every devise of land or of any estate therein, or bequest of personal estate to the wife of the testator, shall be construed to be intended in bar of her dower in lands or share of the personal estate, respectively, unless it be otherwise expressed in the will.

See sections 1173, 1176, and annotations.

Act of Maryland of 1798, ch. 101, subch. 13, sec. 1; Comp. Stat. D. C., p. 35, sec. 157.

SEC. 1173. RENUNCIATION OF DEVISES AND BEQUESTS.—A widow shall be barred of her right of dower in the land and share in the personal estate by any such devise or bequest unless within six months after administration may be granted on her husband's estate she shall file in the probate court a written renunciation to the following effect: "I, A. B., widow of ———, late of ———, deceased, do hereby renounce and quit all claim to any devise or bequest made to me by the last will of my husband exhibited and proved according to law; and I elect to take in lieu thereof my dower and legal share of the estate of my said husband." If, during said period of six months, a

suit should be instituted to construe the will of her husband, the period of six months for the filing of such renunciation shall commence to run from the date when such suit shall be finally determined, by appeal or otherwise.

By renouncing all claim to any and all devises and bequests, made to her by the will of her husband, she shall be entitled, in addition to her dower, to the distributive share of his personal property, which she would have taken had he died intestate, and, except in cases of valid antenuptial or postnuptial agreements, this provision for the wife shall apply with the effect (without formal renunciation) to cases where the husband has made no devise or bequest to his wife.

By renouncing, within the period above prescribed, all claim to any and all devises or bequests, made to him by the will of his wife, the husband shall be entitled to the distributive share in her personal property which he would have taken had she died intestate, and, except in cases of valid antenuptial or postnuptial agreements, this provision for the husband shall apply with like effect (without formal renunciation) to cases where the wife has made no devise or bequest to her husband.

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 567), repealing 31 Stat. L., p. 1189.

Act of Maryland of 1798, ch. 101, subch. 13, sec. 2, Comp. Stat. D. C., p. 35, sec. 158.

See section 1176 and annotations.

SEC. 1174. DEVISE OF BOTH REALTY AND PERSONALTY.—If the will of the husband devise and bequeath a part of both real and personal estate to the wife, she shall renounce the whole or be otherwise barred of her right to both real and personal estate.

Act of Maryland of 1798, ch. 101, subch. 13, sec. 3; Comp. Stat. D. C., p. 35, sec. 159.

See section 1176 and annotations.

SEC. 1175. DEVISE OF EITHER REALTY OR PERSONALTY.—If the will devise only a part of the real estate or bequeath only a part of the personal estate, the devise or bequest shall bar her of only the real or personal estate, as the case may require: *Provided, nevertheless*, That if the devise of either real or personal estate, or of both, shall be expressly in lieu of her legal share of one or both she shall accordingly be barred, unless she renounce as aforesaid.

Act of Maryland of 1798, ch. 101, subch. 13, sec. 4; Comp. Stat. D. C., p. 36, sec. 160.

See section 1176 and annotations.

SEC. 1176. WHEN NOTHING PASSED BY THE DEVISE.—If, in effect, nothing shall pass by such devise she shall not be thereby barred, whether she shall or shall not renounce as aforesaid, it being the intent hereof that a widow accepting or abiding by a devise in lieu of her legal right shall be considered a purchaser with a fair consideration.

Act of Maryland of 1798, ch. 101, subch. 13, sec. 5; Comp. Stat. D. C., p. 36, sec. 161.

"An examination of section 1176 and the four sections immediately preceding it shows that devises and bequests were used interchangeably in those sections. * * * Section 1176 therefore appl'es equally to devises and bequests." *Jordan v. American Sec. & Tr. Co.*, 38 App. D. C. 391 (1912); 40 W. L. R. 149. Where a will, bequeathing \$10 to the wife of the testator, falsely states that he has previously satisfactorily provided for her out of his

estate, the widow need not file a renunciation of the bequest, and she is entitled to one-half rather than one-third of the personalty. *Ib.* Quære, whether under other circumstances a bequest of \$10 would be regarded as nominal. *Ib.*

SEC. 1177. HUSBAND LIABLE FOR WIFE'S ACTS IN CERTAIN CASES.— Nothing in this chapter shall be construed to relieve the husband from liability for the debts, contracts, or engagements which the wife may incur or enter into upon the credit of her husband, or as his agent, or for necessities for herself or for his or their children; but as to all such cases his liability shall be or continue as at common law.

See section 1156.

This section "does not undertake to provide that she shall not render herself liable for necessities when contracted for independently of her husband and with reference to her separate estate, but merely that, in such cases, the husband shall not be relieved of any liability therefor that he may be under by virtue of the common law. It does not substitute the common-law liability of the husband for that of the wife, but retains it as an additional security for the benefit of the other contracting party." *Dobbins v. Thomas*, 26 App. D. C. 157 (1905); 33 W. L. R. 743.

CHAPTER THIRTY-FOUR

INTEREST AND USURY

SEC. 1178. RATE OF INTEREST.—The rate of interest in the District upon the loan or forbearance of any money, goods, or things in action, and the rate to be allowed in judgments and decrees, in the absence of express contract as to such rate of interest, shall be six dollars upon one hundred dollars for one year, and at that rate for a greater or less sum or for a longer or shorter time.

See sec. 1321.

R. S. D. C., sec. 714, Comp. Stat. D. C., p. 283, sec. 2.

"When the promise to pay a sum above the legal interest depends upon a contingency, and not upon any happening of a certain event, the loan is not usurious." *Whelpley v. Ross*, 25 App. D. C. 207 (1905); 33 W. L. R. 371.

Prior to code, see *Richards v. Bippus*, 18 App. D. C. 293 (1901); 29 W. L. R. 414; *D. C. v. Metropolitan R. R. Co.*, 8 App. D. C. 322 (1896), affirmed in 195 U. S. 322; *Gray v. D. C.*, 1 App. D. C. 20 (1893); 21 W. L. R. 387.

SEC. 1179. EXPRESS CONTRACTS.—The parties to a bond, bill, promissory note, or other instrument of writing for the payment of money at any future time may contract therein for the payment of interest on the principal amount thereof at any rate not exceeding eight per centum per annum.

Maximum interest reduced from 10 per cent to 8 per cent by act of April 19, 1920 (41 Stat. L., pt. 1, p. 568).

R. S. D. C., sec. 714; Comp. Stat. D. C., p. 283, sec. 2.

Cooper v. United Security Life Insurance Co., 33 App. D. C. 205 (1909); 37 W. L. R. 392.

Whelpley v. Ross, cited under section 1178.

SEC. 1180. WHAT IS USURY.—If any person or corporation shall contract in the District, verbally, to pay a greater rate of interest than 6 per centum per annum, or shall contract, in writing, to pay a greater rate than 8 per centum per annum, the creditor shall forfeit the whole of the interest so contracted to be received: *Provided*, That nothing in this chapter contained shall be held to repeal or affect the Act of Congress approved February 4, 1913, relating to the business of loaning money on security. (Thirty-seventh Statutes, part 1, page 657.)

Act of April 19, 1920 (41 Stat. L., p. 568), repealing 31 Stat. L., pt. 1, p. 1189, as amended by act of June 30, 1902 (32 Stat. L., pt. 1, p. 542).

R. S. D. C., sec. 715; Comp. Stat. D. C., p. 283, sec. 3.

One who acquires promissory notes with knowledge of usury in their inception is not a bona fide holder for value. *Mollohan v. Masters*, 45 App. D. C. 414 (1916); 44 W. L. R. 727, 771; certiorari denied in 242 U. S. 652.

"A defense of usury good against one obligation will not constitute a valid offset against a distinct and independent obligation, though between the same parties." *Metropolitan Loan & T. Co. v. Schafer*, 44 App. D. C. 356 (1916); 44 W. L. R. 114. "Until the adoption of our Code, usurious interest could only be recovered by a separate action brought within one year. * * * But now if suit is brought on the principal debt after payment of usurious inter-

est, such usury may be made a valid set-off against the principal debt. Usury upon obligations paid and canceled can not be used as a set-off against a subsequent obligation even between the same parties, either in law or in equity." *Ib.* A purchase of negotiable paper in market overt "at a heavy discount below the face value" does not show usury. *Ib.* Commenting on the case just cited, it was said in *Mollohan v. Masters*, supra, "That decision will be construed to apply narrowly to the facts of that case * * * and not to furnish a defense for every sort of fraudulent juggling through the medium of collateral transactions."

Usurious contract examined and held to be subject to laws of District of Columbia, although expressly declared to be made pursuant to laws of Virginia. *Washington National B. & L. Assoc. v. Pifer*, 31 App. D. C. 434 (1908); 36 W. L. R. 426, citing *Croissant v. Empire State Realty Co.*, 29 App. D. C. 547; 35 W. L. R. 350.

Prior to Code, see *Richards v. Bippus*, 18 App. D. C. 293 (see sec. 1178); *Lawrence v. Middle States Loan Bldg. & Constr. Co.*, 7 App. D. C. 161 (1895); 23 W. L. R. 793; *Presby v. Thomas*, 1 App. D. C. 171 (1893); 21 W. L. R. 659.

SEC. 1181. ACTION TO RECOVER USURY PAID.—If any person or corporation in the District shall directly or indirectly take or receive any greater amount of interest than is herein declared to be lawful, whether in advance or not, the person or corporation paying the same shall be entitled to sue for and recover the amount of the unlawful interest so paid from the person or corporation receiving the same, provided said suit be begun within one year from the date of such payment.

See annotations to section 1180.

One year limitation runs, not from the time that usurious interest may have been deducted, but from the time the last payment was made. "Until that time the full amount of the deduction had not been paid by her. There could be no usurious interest collected until the appellee had paid the full amount she received, together with legal interest." *Brown v. Slocum*, 30 App. D. C. 576 (1908); 36 W. L. R. 202.

SEC. 1182. UNLAWFUL INTEREST TO BE CREDITED.—In any action brought upon any contract for the payment of money with interest at a rate forbidden by law, as aforesaid, any payments of interest that may have been made on account of said contract shall be deemed and taken to be payments made on account of the principal debt, and judgment shall be rendered for no more than the balance found due after deducting and properly crediting the interest so paid; but no bona fide indorsee of negotiable paper purchased before due shall be affected by any usury exacted by any former holder of said paper unless he had notice of the usury before his purchase.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 542), repealing 31 Stat. L., pt. 1, p. 1189.

See annotations to section 1180.

Quære, whether maker of new notes to take the place of former usurious notes to which he was a party can take advantage of section 1182 and plead usury as a defense to all except the principal sum due. *King v. Curtin*, 31 App. D. C. 23 (1908); 36 W. L. R. 316.

SEC. 1183. TESTIMONY OF PARTIES.—Whenever in any action to recover a debt the defendant shall claim that payments of unlawful interest on said debt have been made to said plaintiff or those under whom he claims, which the defendant is entitled to have credited on the principal of the debt, the plaintiff or the party who received said unlawful interest may be examined as a witness to prove the payment of the same, and shall not be excused from testifying in relation thereto, nor shall a creditor who is made defendant to a bill in equity

exhibited against him for discovery as to payments of unlawful interest made to him be excused from answering as to the same.

SEC. 1184. JUDGMENTS FOR LIQUIDATED DEBT.—In an action in the supreme court of the District to recover a liquidated debt on which interest is payable by contract or by law or usage the judgment for the plaintiff shall include interest on the principal debt from the time when it was due and payable, at the rate fixed by the contract, if any, until paid.

R. S. D. C., section 829, Comp. Stat. D. C., p. 291, sec. 21.

Where in a suit on a promissory note for \$2,500 (with interest at 6 per cent) the defendant files a plea of the general issue and the statute of limitations, and the jury returns a verdict for the plaintiff "in the sum of \$2,500 and costs," the court, on appeal (in the absence of a bill of exceptions containing the evidence introduced), will reverse the action of the trial justice in reforming the verdict so as to include interest. *Metzger v. Metzger*, 35 App. D. C. 389 (1910) ; 38 W. L. R. 473. "We do not mean by this to rule that, in a case where no question is made by either the pleadings or evidence as to the payment of interest, the court would not be authorized, under the provisions of said section 1184, to direct the assessment of interest. In such a situation the finding of the jury would, under the statute, automatically carry interest." *Ib.*

Prior to Code, see *Richards v. Bippus*, 18 App. D. C. 293 (1901) ; 29 W. L. R. 414.

SEC. 1185. JUDGMENTS FOR DAMAGES.—In an action to recover damages for breach of contract the judgment shall allow interest on the amount for which it is rendered from the date of the judgment only; but nothing herein shall forbid the jury, or the court, if the trial be by the court, from including interest as an element in the damages awarded, if necessary to fully compensate the plaintiff. In an action to recover damages for a wrong the judgment for the plaintiff shall bear interest.

SEC. 1186. JUDGMENT IN SUITS ON CONTRACTS MADE ELSEWHERE.—In an action on a contract for the payment of a higher rate of interest than is lawful in the District, made or to be performed in any State or Territory of the United States where such contract rate of interest is lawful, the judgment for the plaintiff shall include such contract interest to the date of the judgment and interest thereafter at the rate of six per centum per annum until paid.

Lockwood v. Lindsey, 6 App. D. C. 396 (1895) ; 23 W. L. R. 371.

CHAPTER THIRTY-FIVE

JAIL

SEC. 1187. WARDEN.—The supreme court of the District shall have authority to appoint a suitable person to act as warden of the jail and to remove such officer whenever, in the opinion of the court, the public interests may require his removal, and to fill all vacancies which may occur.

Office of warden abolished. See 35 Stat. L. p. 303; 35 Stat. L. 717; 36 Stat. L., p. 122; 36 Stat. L. 464; 36 Stat. L. 785; 36 Stat. L. 1002-1003; 39 Stat. L. 711.

For summary of legislation affecting workhouse and jail, see *Fiske v. D. C.*, 38 App. D. C. 120 (1912).

SEC. 1188. TERM OF OFFICE.—The warden shall hold office for the term of four years, unless sooner removed in accordance with the preceding section.

See annotations to section 1187.

SEC. 1189. SALARY.—He shall receive an annual salary of two thousand dollars, which shall include all fees and emoluments.

32 Stat. L., pt. 1, p. 542, increasing salary.

SEC. 1190. BOND.—The warden shall, before entering upon his office, execute to the United States a bond for the faithful performance of the duties thereof, in the penal sum of five thousand dollars, with sureties to be approved by some judge of the supreme court of the District.

See annotations to section 1187.

SEC. 1191. POWERS AND DUTIES.—The warden shall have the exclusive supervision and control of the jail of the District and be accountable for the safe-keeping of all prisoners legally committed thereto, and shall have all the power and discharge all the duties legally exercised and discharged over said jail and the prisoners therein prior to the twenty-ninth day of February, eighteen hundred and sixty-four, by the marshal of the District.

See annotations to section 1187.

SEC. 1192. EMPLOYMENT OF PRISONERS.—Persons sentenced to imprisonment in the jail may be employed at such labor and under such regulations as may be prescribed by the supreme court of the District and the proceeds thereof applied to defray the expenses of the trial and conviction of any such person.

See annotations to section 1187.

SEC. 1193. COMMITMENT BY MARSHAL.—Nothing in the preceding sections of this chapter shall be construed to impair or interfere with the authority of the marshal of the District to commit persons to the jail or to produce them in open court or before any judicial officer when thereto required.

See annotations to section 1187.

SEC. 1194. DELIVERY TO MARSHAL.—It shall be the duty of the warden to receive such prisoners and to deliver them to the marshal or his duly authorized deputy, on the written request of either, for the purpose of taking them before any court or judicial officer, as provided in the preceding section.

See annotations to section 1187.

SEC. 1195. SUBORDINATE OFFICERS.—The warden shall have authority to appoint such subordinate officers, guards, and employees as are necessary for the proper management and safe-keeping of prisoners, which may be authorized by law, subject to the approval of the chief justice of the supreme court of the District.

See annotations to section 1187.

SEC. 1196. SUPREME COURT OF THE DISTRICT OF COLUMBIA TO MAKE RULES.—It shall be the duty of the supreme court of the District to make such rules for the government and discipline of the prisoners confined in the jail as shall be deemed necessary for the health, security, and the protection of such prisoners from cruel treatment by any person in charge thereof.

See annotations to section 1187.

SEC. 1197. ANNUAL REPORT.—The warden shall annually, in the month of November, make a detailed report to the Attorney-General.

See annotations to section 1187.

SEC. 1198. EXECUTION IN CAPITAL CASES.—Whenever any person confined in the jail is adjudged to suffer death, it shall be the duty of the warden to carry such judgment into execution.

See annotations to section 1187.

SEC. 1199. MODE OF EXECUTION.—The manner of inflicting the punishment of death shall be by hanging.

SEC. 1200. PLACE OF EXECUTION.—Persons adjudged to suffer death shall be executed within the walls of the jail of the District, or within the yard or inclosure thereof, and not elsewhere.

SEC. 1201. OFFICERS TO ATTEND.—It shall be the duty of the warden or one of his deputies, with such officers of the prison, constables, and other peace officers as the warden or deputy may deem necessary and proper, to attend at such execution.

See annotations to section 1187.

SEC. 1202. WHO MAY BE PRESENT.—The warden or his deputy shall invite the district attorney, the counsel of the prisoner, two or more physicians, and twelve respectable citizens to be present at every such execution, and at the request of the person to be executed shall also allow any of his near relatives and any ministers of the gospel (not more than three) to be present thereat.

See annotations to section 1187.

SEC. 1203. WHO MAY NOT BE PRESENT.—No persons other than those mentioned in the two preceding sections, and no person whatever under the age of twenty-one years, shall be allowed to witness any such execution.

SEC. 1204. SUBSISTENCE OF PRISONERS.—There shall be allowed and paid by the Attorney-General for the subsistence of prisoners in the custody of any marshal of the United States and the warden of the jail in the District of Columbia such sum as it reasonably and actually costs to subsist them. And it shall be the duty of the Attorney-General to prescribe such regulations for the government of the marshals and the warden of the jail in the District of Columbia in relation to their duties under this chapter as will enable him to determine the actual and reasonable expenses incurred.

R. S. D. C., secs, 1081-1096; R. S. U. S., sec. 5545; Comp. Stat. D. C., pp. 285, sec. 18.

CHAPTER THIRTY-SIX

JOINT CONTRACTS

SEC. 1205. WHAT CONTRACTS JOINT AND SEVERAL.—Every contract and obligation entered into by two or more persons, whether partners or merely joint contractors, whether under seal or not, and whether written or verbal, and whether expressed to be joint and several or not, shall for the purposes of suit thereupon be deemed joint and several.

See sections 1211, 1271.

R. S. D. C., section 827.

In a suit against the owners of property (some of whom are minors) to recover a brokerage commission, it is proper (under secs. 1205 and 1209) after issue joined to enter a nonsuit as to the minors and proceed against the remaining defendants. *Rhees v. Morris*, 52 App. D. C. 27 (1922) ; 50 W. L. R. 662.

Executor of a deceased joint obligor may be sued at law with his coobligor. *White v. Conn. General L. Ins. Co.*, 34 App. D. C. 460 (1910) ; 38 W. L. R. 154 (writ of error dismissed, 218 U. S. 684). This section "merely affects the remedy. It relates wholly to procedure. It does not convert a joint instrument into a joint and several instrument, or change a joint obligor into a joint and several obligor. The contract and the relations of the obligations of the contractors remain unchanged." *Ib.*

Prior to Code, see *Magruder v. Belt*, 7 App. D. C. 303 (1895) ; 23 W. L. R. 827. *Young v. Warner*, 6 App. D. C. 433 (1895) ; 23 W. L. R. 373. *Harris v. Leonhardt*, 2 App. D. C. 318 (1894), 22 W. L. R. 107, cited with approval in *Rhees v. Morris*, *supra*.

SEC. 1206. DEATH OF JOINT CONTRACTOR.—If one or more of such persons shall die, his or their executors, administrators, or heirs shall be bound by said contract in the same manner and to the same extent as if the same were expressed to be joint and several.

See annotations to section 1205.

SEC. 1207. MERGER.—If an action be brought against all the parties to such contract, but service of process is had against some only of the defendants, or an action is brought against and service had on some only of the parties, a judgment against the parties so served shall not work an extinguishment or merger of the cause of action on which such judgment is founded as respects the parties not so served, but they shall remain liable to be sued separately.

SEC. 1208. DEATH AFTER SUIT BROUGHT.—If any one of several defendants in an action shall die after the commencement of the action, his legal representatives may be made parties thereto as directed in chapter two aforesaid.

SEC. 1209. EVIDENCE.—In actions *ex contractu* against alleged joint debtors it shall not be necessary for the plaintiff to prove their joint liability as alleged in order to maintain his action, but he shall be

entitled to recover, as in actions *ex delicto*, against such of the defendants as shall be shown by the evidence to be jointly indebted to him, or against one only, if he alone is shown to be indebted to him, and judgment shall be rendered as if the others had not been joined in the suit.

See annotations to section 1205.

SEC. 1210. SEPARATE COMPROMISE.—Any one of several joint debtors, when their debt is overdue, may make a separate composition or compromise with their creditors, with the same effect as is provided in the case of parties in chapter forty-seven, on partners.

See sections 1494, 1497.

Compromise with one of several judgment debtors, and an entry of a satisfaction of the judgment as to him, will not operate as a release of the other judgment debtors. *Bunch v. U. S.* use of *Keppler*, 40 App. D. C. 156 (1913); 41 W. L. R. 183.

CHAPTER THIRTY-SEVEN

JOINDER OF PARTIES AND CAUSES OF ACTION

SEC. 1211. Where money is payable by two or more persons jointly or severally or jointly and severally upon the same obligation or instrument, one action may be sustained and judgment recovered against all or any of the parties by whom the money is payable, at the option of the plaintiff; but if separate actions be brought unnecessarily against the several parties to such contract, the said actions may on motion be consolidated, and the plaintiff shall be allowed the costs of one action only.

See sections 1205-1210, 1271, 1532.

R. S. D. C., sec. 827, Comp. Stat. D. C., p. 444, sec. 18.

In a suit against the principal and two sureties on a bond the action was discontinued as to one of the sureties. On appeal from an order overruling a motion in arrest of judgment "because the action is against but two of three joint and several obligors," and "because the action has been discontinued against one of the three joint and several obligors," and "because though one of the three joint and several obligors has died since the institution of this suit plaintiffs have failed to make his personal representative a party defendant," the court ruled: "That the action was discontinued as to Horton, who it seems had become involent, presents no ground for arresting the judgment. Section 1211 of the code simply provides that one action may be sustained and judgment recovered against all or any joint and several obligors. It does not require that this shall be done." *Wilkinson v. McKimmie*, 36 App. D. C. 336 (1911); 39 W. L. R. 121, *affirmed* 229 U. S. 590.

Prior to code see *Blagden v. U. S.* use of *Preinkert*, 18 App. D. C. 370 (1901); 29 W. L. R. 401. *Magruder v. Belt*, 7 App. D. C. 303 (1895); 23 W. L. R. 827. *Young v. Warner*, 6 App. D. C. 433 (1895); 23 W. L. R. 373. *Harris v. Leonhardt*, 2 App. D. C. 318 (1894); 22 W. L. R. 107. *Presbrey v. Thomas*, 1 App. D. C. 171 (1893); 21 W. L. R. 659.

CHAPTER THIRTY-EIGHT

JUDGMENTS AND DECREES

SEC. 1212. LIMITATIONS.—Every final judgment at common law and every final decree in equity for the payment of money rendered in the supreme court of the District, and every judgment of a justice of the peace certified to and docketed in the clerk's office of the said supreme court, as herein elsewhere directed, shall be good and enforceable, by an execution issued thereon, for the period of twelve years only from the date when an execution might first be issued thereon, or from the date of the last revival thereof under scire facias, except as provided in the next section; but the time during which the judgment creditor is stayed by agreement *in writing filed in the cause* or injunction, or other order, or by the operation of an appeal from enforcing the judgment is not to be computed as part of said period of twelve years.

See sections 499, 1074 et seq., 1267, 1270.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 542).

Act of Maryland of 1715, ch. 23, sec. 6, Comp. Sta. D. C., p. 360, sec. 8.

Judgment becomes extinct at expiration of 12 years unless revived by scire facias within that time. *Dutton v. Parish*, 34 App. D. C. 393 (1910); 38 W. L. R. 106.

Sections 1212 to 1215, inclusive, and section 1078 of the code completely abrogate the rule of the common law on the subject of the limitation and revival of judgments in the District of Columbia. "Twelve years is fixed by statute as the life of a judgment under our code, and at any time during that period the writ of scire facias may be issued by the creditor for the revival of the judgment by merely filing a praecipe with the clerk." *Simpson v. Minnix*, 30 App. D. C. 582 (1908); 36 W. L. R. 200.

McKay v. Bradley, 26 App. D. C. 449 (annotated under sec. 1267).

Prior to code, see *Mann v. McDonald*, 6 App. D. C. 548 (1895); 23 W. L. R. 439. *Galt v. Todd*, 5 App. D. C. 350 (1895); 23 W. L. R. 98. *Mann v. Cooper*, 2 App. D. C. 226 (1894); 22 W. L. R. 98.

SEC. 1213. EXPIRATION OF JUDGMENT OR DECREE.—At the expiration of said period of twelve years the said judgment or decree shall cease to have any operation or effect, and no action shall be brought on the same nor any scire facias or execution issued on the same thereafter; but this provision shall in no wise affect any proceeding that may be then pending for the enforcement of the said judgment or decree.

See section 1213 and annotation.

SEC. 1214. LIEN OF JUDGMENT OR DECREE.—Every final judgment at common law and every unconditional final decree in equity for the payment of money from the date when the same shall be rendered, every judgment of a justice of the peace when docketed in the clerk's office of the supreme court of the District of Columbia, and every recognizance taken by said supreme court, or a justice thereof, from the time when it shall be declared forfeited, shall be a lien on all the freehold and leasehold estates, legal and equitable, of the defendants bound by such judgment, decree, or recognizance, in any lands, tene-

ments, or hereditaments in the District, whether such estates be in possession or be reversions or remainders, vested or contingent *but such liens on equitable interests shall be enforced by bill in equity*, and any recognizance taken in the police court, after being forfeited, may be transmitted to the clerk's office of said supreme court and therein docketed in the same manner as the judgment of a justice of the peace as aforesaid, and thereupon shall have the same effect as if taken in the said supreme court; and said lien shall continue as long as such judgment, decree, or recognizance shall be in force or until the same shall be satisfied or discharged.

See sections 57, 499, 1074 et seq., 1216, and annotations.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 542).

Judgment lien attaches to afteracquired real estate by the judgment debtor, but only to the extent of actual title which the debtor has therein. *Atlas Portland Cement Co. v. Fox*, 49 App. D. C. 292 (1920); 48 W. L. R. 294.

Roller v. Caruthers, 5 App. D. C. 368 (1895); 23 W. L. R. 151.

See also section 1020, R. S. U. S., re power of courts to remit forfeited recognizances. Also *Juvenile Court Act*, *infra*, p. 517.

SEC. 1215. *SCIRE FACIAS*.—If during the period of twelve years from the rendition of the judgment or decree, or from judgment upon a scire facias thereon, the creditor shall cause a scire facias to be issued upon the judgment or decree and a fiat shall be issued thereupon, the effect of such fiat shall be to extend the effect and operation of said judgment or decree with the lien thereby created and all the remedies for the enforcement of the same for the period of twelve years from the date of such fiat.

See sections 68, 431, 499, 1077, 1078, 1087, 1104.

Simpson v. Minnix, see section 1212.

Scire facias is a judicial writ, which may, however, be converted into an action by appearance and plea thereto by defendant. If not so converted, it remains a judicial writ merely, the life of which is ended and its force spent after a year and a day from the date of issuance. *Collins v. McBlair*, 29 App. D. C. 354 (1907); 35 W. L. R. 243.

As to use of scire facias to revive judgment as against debtor's devisees, see *Waters v. Taylor*, 52 App. D. C. 135 (1922); 50 W. L. R. 779.

Prior to Code: *Harper v. Cunningham*, 8 App. D. C. 430 (1896); 24 W. L. R. 316. *Roller v. Caruthers*, 5 App. D. C. 368 (1895); 23 W. L. R. 151.

SEC. 1216. *LIEN OF MORTGAGE*.—Where real property is sold and conveyed and, at the same time, a mortgage or deed of trust thereupon is given by the purchaser to secure the payment of the whole or any part of the purchase money, the lien of the said mortgage or deed of trust on the property shall be superior to that of a previous judgment or decree against the purchaser.

SEC. 1217. *DOCKET*.—The clerk of said supreme court shall keep and maintain a docket, to be known as the judgment docket, in which shall be entered the titling of every cause and proceeding in which any judgment or decree may be entered or any recognizance taken, as aforesaid, including recognizances transmitted from the police court, as aforesaid, with a minute of the dates and amounts thereof, and said judgments, decrees, and recognizances shall be indexed in the names of all the principals and sureties bound thereby.

CHAPTER THIRTY-NINE

LANDLORD AND TENANT

SEC. 1218. WHEN NOTICE TO QUIT NOT NECESSARY.—When real estate is leased for a certain term no notice to quit shall be necessary, but the landlord shall be entitled to the possession, without such notice, immediately upon the expiration of the term.

See section 1236.

Morse v. Brainerd, 42 App. D. C. 448 (1914); 42 W. L. R. 707, "Under section 1218 no notice to quit is necessary when the lease is for a term certain." (See annotations to section 1033.)

SEC. 1219. NOTICES TO QUIT.—A tenancy from month to month, or from quarter to quarter, may be terminated by a thirty days' notice in writing from the landlord to the tenant to quit, or by such a notice from the tenant to the landlord of his intention to quit, said notice to expire, in either case, on the day of the month from which such tenancy commenced to run.

See sections 1220 et seq., 1236.

While the landlord is not required to specify in the notice the date of the termination of the notice, having done it he is bound by that date. Merritt v. Thompson, 53 App. D. C. 233 (1923); 51 W. L. R. 522. A notice dated and served July 1, requiring tenant to vacate on July 31, is insufficient. "By the rule of interpretation, excluding the first day and including the last, there was not full 30 days." *Ib.*

Thirty-day notice, expiring on the day of the month from which the tenancy is alleged by defendant to run, is sufficient, whether estate be from month to month or by sufferance. McCoy v. Duehay, 51 App. D. C. 363 (1922); 50 W. L. R. 276. Sundays and half holidays on Saturday (under sec. 1389) are not excluded in computing the time given in the notice. *Ib.* Notice is not bad because it gives 31 days' notice. *Ib.*, citing Boss v. Hagan, 49 App. D. C. 106 (1919); 47 W. L. R. 749. Acceptance of rent to November 30 is not a waiver of a notice to quit expiring on December 1. *Ib.* (See Byrne v. Morrison, *infra*.)

A notice to quit which describes the property in the same manner as in defendant's lease, and which gives more than 30 days' notice, held to be sufficient. Bliss v. Duncan, 44 App. D. C. 93 (1915); 43 W. L. R. 709.

"The receipt of rent by a landlord, after notice to quit, of rent for a new term or part thereof, amounts to a waiver of his right to demand possession under that notice * * *. But the receipt of rent for the current month, pending the notice to quit, can not have that effect * * * ." Byrne v. Morrison, 25 App. D. C. 72 (1905); 33 W. L. R. 215.

SEC. 1220. TENANCY AT WILL.—A tenancy at will may be terminated by thirty days' notice in writing by either landlord or tenant.

See sections 1014, 1036.

R. S. D. C., secs. 680, 681; Comp. Stat. D. C., p. 316, secs. 4, 5.

SEC. 1221. TENANCY BY SUFFERANCE.—A tenancy by sufferance may be terminated at any time by a notice in writing from the landlord to the tenant to quit the premises leased, or by such notice from the tenant to the landlord of his intention to quit on the thirtieth day after the day of the service of the notice. If such notice expires before any periodical installment of rent fall due, according to the

terms of the tenancy, the landlord shall be entitled to a proportionate part of such installment to the date fixed for quitting the premises.

See sections 1011, 1014, 1034, 1036, 1218, 1220. R. S. D. C., secs. 680, 681; Comp. Stat. D. C., p. 316, secs. 4, 5. *Standard Savings Bank v. Stone*, 52 App. D. C. 42, annotated under section 1116.

A notice to terminate a tenancy by sufferance is sufficient which requires tenant to quit "at the end of 30 days from the date of the service" upon him, instead of on the thirtieth day thereafter. *Hayden v. Filippone*, 51 App. D. C. 246 (1922); 50 W. L. R. 149.

A notice served on tenant personally, wherein he is described as "Wm." instead of Richard, and giving him the required length of time in which to vacate is sufficient under section 1221. "The proceedings in landlord and tenant cases are informal, and if the substantial rights of both parties are preserved, a departure from strict procedure may be ignored." *Creel v. Adams*, 49 App. D. C. 306 (1920); 48 W. L. R. 333.

Morse v. Brainerd, 42 App. D. C. 448 (annotated under sec. 1033).
preserved, a departure from strict procedure may be ignored." *Creel v. Adams*,
Velati v. Dante, 39 App. D. C. 372 (1912); 41 W. L. R. 40; certiorari denied, 227 U. S. 679.

SEC. 1222. NOTICE NOT TO BE RECALLED.—Neither landlord nor tenant, after giving notice as aforesaid, shall be entitled to recall the notice so given without the consent of the other party, but after the expiration of the notice given by the tenant as aforesaid the landlord shall be entitled to the possession as if he had given the proper notice to quit; and after the expiration of the notice given by the landlord as aforesaid the tenant shall be entitled to quit as if he had given the proper notice of his intention to quit.

SEC. 1223. SERVICE OF NOTICE.—Every notice to the tenant to quit shall be served upon him personally, if he can be found, and if he can not be found it shall be sufficient service of said notice to deliver the same to some person of proper age upon the premises, and in the absence of such tenant or person to post the same in some conspicuous place upon the leased premises.

See section 21.

A notice delivered by landlord to tenant's son, 17 years of age, at her request, and the same is delivered to her by the boy, is served substantially in compliance with the statute. *Hockman v. Shreve*, 50 App. D. C. 140 (1920); 48 W. L. R. 791.

A landlord left notice to quit with tenant's wife, with a request that she deliver it to him, which was done. "There is nothing in this (section) which requires that the landlord in person or an officer shall make the service. It may be made by any person acting for the landlord. In this case the wife, at the request of the landlord, handed the notice to the tenant, and thus he was personally served. * * * In the case of a notice to quit, service by any person is enough, so long as the tenant receives the notice in time to allow him the statutory period of vacate." *Hardebeck v. Hamilton*, 50 App. D. C. 113 (1920); 48 W. L. R. 837.

SEC. 1224. REFUSAL TO QUIT, DOUBLE RENT.—If the tenant, after having given notice of his intention to quit as aforesaid, shall refuse, without reasonable excuse, to surrender possession according to such notice, he shall be liable to the landlord for rent at double the rate of rent payable according to the terms of tenancy for all the time that the tenant shall so wrongfully hold over, to be recovered in the same way as the rent accruing before the termination of the tenancy.

Act of 11 Geo. 2, ch. 19, sec. 18; Comp. Stat. D. C., p. 333, sec. 65.

SEC. 1225. EJECTMENT OR SUMMARY PROCEEDINGS.—Whenever a lease for any definite term shall expire, or any tenancy shall be

terminated by notice as aforesaid, and the tenant shall fail or refuse to surrender possession of the leased premises, the landlord may bring an action of ejectment to recover possession in the supreme court of the District; or the landlord may bring an action to recover possession before a justice of the peace, as provided in chapter one, subchapter one, aforesaid.

See sections 20, 996, 1169.

R. S. D. C., secs. 684 et seq.; Comp. Stat. D. C., p. 317, secs. 8 et seq.

SEC. 1226. ARREARS OF RENT AND DOUBLE RENT.—In either case the landlord may join with his claim for recovery of the possession of the leased premises a claim for all arrears of rent accrued to the termination of the tenancy, and, when the tenant has given the notice, for double rent from the termination of the tenancy to the verdict, or judgment; if the trial be by the court and for damages for waste: *Provided*, That in such action before a justice of the peace the amount so claimed shall be within his jurisdiction. If judgment for possession be rendered in favor of the plaintiff, he shall be entitled, at the same time, to a judgment for said arrears of rent, and for said double rent, as the case may be, to the date of the verdict or judgment as aforesaid, and for damages for waste.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 542).

Act of 4 Geo. 2, ch. 28, sec. 1; Comp. Stat. D. C., p. 326, sec. 45.

SEC. 1227. CONSOLIDATION OF ACTIONS.—If actions be brought separately, either in said supreme court or before a justice of the peace, for arrears of rent and for the possession, they may be afterwards consolidated and one judgment rendered in them for the possession and also for the rent.

SEC. 1228. PLEA OF TITLE.—If, in such action to recover possession before a justice of the peace, the defendant shall plead a title in himself or in some person under whom he claims, not derived from the plaintiff, the further proceeding therein shall be as directed in said subchapter one of chapter one aforesaid.

R. S. D. C., sec. 687, Comp. Stat. D. C., p. 317, sec. 11.

SEC. 1229. LIEN FOR RENT.—The landlord shall have a tacit lien for his rent upon such of the tenant's personal chattels, on the premises, as are subject to execution for debt, to commence with the tenancy and continue for three months after the rent is due and until the termination of any action for such rent brought within said three months.

See sections 1105, et seq.

R. S. D. C., sec. 678; Comp. Stat. D. C., p. 316, sec. 2.

Landlord to whom chattels are delivered as security for payment of rent "had a lien on the property for the payment of his rent, which was something more than the tacit lien given to a landlord by the statute" and his possession can not be disturbed without previous payment of the claim. *Brown v. Petersen*, 25 App. D. C. 359 (1905); 33 W. L. R. 310.

Surrender of lease and wrongful eviction of tenant by landlord as a defense to action for rent, see *Okie v. Person*, 23 App. D. C. 170 (1904); 32 W. L. R. 103.

See also *Hume v. Riggs*, 12 App. D. C. 355; *The Richmond v. Cake*, 1 App. D. C. 447; 21 W. L. R. 819.

SEC. 1230. HOW ENFORCED.—The said lien may be enforced—

First. By attachment, to be issued upon affidavit that the rent is

due and unpaid; or, if it be not due, that the defendant is about to remove or sell some part of said chattels.

Second. By judgment against the tenant and execution, to be levied on said chattels, or any of them, in whosoever hands they may be found.

Third. By action against any purchaser of said chattels, with notice of the lien, in which action the plaintiff may have judgment for the value of the chattels purchased by the defendant not exceeding the rent in arrear.

R. S. D. C., sec. 679; Comp. Stat. D. C., p. 316, sec. 3.

Robertson v. Southerland, 22 App. D. C. 595 (1903); 31 W. L. R. 733; see also *U. S. ex rel. Robertson v. Barnard*, 24 App. D. C. 8 (1904); 32 W. L. R. 458.

SEC. 1231. HOW ATTACHMENT ENFORCED.—Such attachment may be issued in any action for the recovery of the possession of the leased premises by the landlord, in which the rent in arrear, or double rent, or both, shall be claimed as aforesaid, and it shall be lawful for any officer to whom the writ of attachment shall be delivered to be executed to break open an outer or inner door when necessary to the execution of the same.

SEC. 1232. APPEAL.—Either party against whom judgment is rendered by a justice of the peace, in the action aforesaid by the landlord to recover possession of the leased premises, may appeal from such judgment, and such appeal shall be tried in the supreme court in the same manner in which appeals from justices of the peace are taken and tried in other cases.

See Municipal Court Acts, pp. 519, 521, Appendix.

R. S. D. C., sec. 688, Comp. Stat. D. C. p. 317, sec. 12.

SEC. 1233. UNDERTAKING ON APPEAL.—In case of an appeal by the defendant his undertaking, in order to operate as a supersedeas, shall be an undertaking, with one or more sureties approved by the court, to abide by and pay the judgment rendered, if it shall be affirmed, together with the costs of the appeal, and to pay all intervening damages to the leased property and compensation for the use and occupation thereof, from the date of the judgment of the municipal court to the date of its affirmance; and in said undertaking the said defendant and his surety or sureties, the latter submitting themselves to the jurisdiction of the court, shall agree that if the judgment be affirmed judgment may be rendered against them by the appellate court for the amount of the judgment so affirmed and the intervening damages, compensation, and costs aforesaid.

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 568), repealing 31 Stat. L., pt. 1, p. 1189.

R. S. D. C., sec. 689, Comp. Stat. D. C., p. 317, sec. 13.

An appeal without a supersedeas bond is sufficient to secure a review of the case, but *ex proprio vigore* it is not sufficient to stay execution of the judgment. *Sechrist v. Bryant*, 52 App. D. C. 286 (1923); 51 W. L. R. 67.

As to damages recoverable, see *Desio v. Hutchinson*, 36 App. D. C. 68 (1910); 38 W. L. R. 813, annotated under sec. 20.

As to sureties required prior to act of April 19, 1920, see *Dowling v. Buckley*, 27 App. D. C. 205; 34 W. L. R. 286. Bond should be for intervening damages to the property and compensation for the use and occupation thereof, and not for the rent stipulated in the expired contract. *Bryne v. Morrison*, 25 App. D. C. 72 (1905); 33 W. L. R. 215.

SEC. 1234. ASSIGNEE OF REVERSION.—The grantee or assignee of the reversion of any leased premises shall have the same right of

action against the lessee, his personal representatives, heirs, or assigns, for rent or for any forfeiture or breach of any covenant or condition in the lease which the grantor or assignor might have had; and the assignee of the lessee shall have the same rights of action against the lessor, his grantee, or assignee, upon any covenants in the lease which the lessee might have had against the lessor.

Stat. 32 Hen. 8, ch. 34, secs. 1, 2, Comp. Stat. D. C. p. 321, secs. 32, 33.

Covenant against subletting runs with the land and may be enforced by assignee of reversion. *Bailey v. Allan E. Walker & Co.*, 53 App. D. C., 307 (1923); 51 W. L. R. 716.

SEC. 1235. Whenever real and personal property shall be leased together, as, for example, a house with the furniture contained therein, the landlord, either in an action of ejectment or in the summary proceeding for possession, before a justice of the peace, provided for in subchapter one of chapter one, may have a judgment for recovery of the personalty as well as for the recovery of the realty.

SEC. 1236. AGREEMENT AS TO NOTICE.—Nothing herein contained shall be construed as preventing the parties to a lease, by agreement in writing, from substituting a longer or shorter notice to quit than is above provided or to waive all such notice.

See section 1219.

CHAPTER FORTY

LIENS

SEC. 1237. MECHANIC'S LIEN.—Every building erected, improved, added to, or repaired by the owner or his agent, and the lot of ground on which the same is erected, being all the ground used or intended to be used in connection therewith, or necessary to the use and enjoyment thereof, to the extent of the right, title, and interest, at that time existing, of such owner, whether owner in fee or of a less estate, or lessee for a term of years, or vendee in possession under a contract of sale, shall be subject to a lien in favor of the contractor with such owner or his duly authorized agent for the contract price agreed upon between them, or, in the absence of an express contract, for the reasonable value of the work and materials furnished for and about the erection, construction, improvement, or repair of or addition to such building, or the placing of any engine, machinery, or other thing therein or in connection therewith so as to become a fixture, though capable of being detached: *Provided*, That the person claiming the lien shall file the notice herein prescribed.

Act of July 2, 1884 (23 Stat. L. 64), Comp. Stat. D. C. p. 366, sec. 1.

The provision of the code with respect to mechanic's liens is "fundamentally the same as in the former statute." *Lipscomb v. Hough*, 52 App. D. C. 313 (1923); 51 W. L. R. 148. "A builder contracting with the lessee of premises to furnish labor and material thereon, with notice that he is dealing with the lessee and not the owner, is estopped to complain of ignorance of the terms of the lease, where as here, it was a matter of public record." *Ib.* "Nor does a covenant in the lease, vesting in the lessor title in the buildings, and improvements erected on the premises at the termination of the lease, create the relation of principal and agent between the lessor and lessee." *Ib.* citing *Albaugh v. Litho-Marble Decorating Co.*, 14 App. D. C. 113; 27 W. L. R. 130. *Langley v. D'Audigne*, 31 App. D. C. 409; 36 W. L. R. 407. "In the latter case, the statutes relative to mechanics' liens * * * are reviewed at length with the conclusion that a lien upon the premises can only be imposed where the building is erected or repaired at the instance of the owner or his agent. If the work is done and materials furnished at the instance of a lessee, or tenant for life, or years, or a person having an equitable interest therein, the lien can only extend to the interest of the lessee, tenant, or equitable owner." *Ib.*

In a proceeding to foreclose a mechanic's lien, a contractor who intentionally fails to perform the contract according to its terms, and refuses to remedy the defect, is not entitled to the benefit of the doctrine of substantial performance. *Turner v. Henning*, 49 App. D. C. 183 (1919).

Lessee held to be agent of lessor, in ordering improvements, so as to charge interest of lessor in land. *McLean v. Nolan*, 44 App. D. C. 1 (1915); 43 W. L. R. 386.

Libbey v. Harney, 41 App. D. C. 205 (1913); 41 W. L. R. 818.

A mechanic's lien is purely a creature of statute. "The performance of the work, or the furnishing of the materials, gives merely a right to acquire a lien. The statute prescribes the steps necessary to perfect it. These requirements relate to the remedy rather than the right." "In determining whether a right to a lien exists, the statute should be strictly construed against one claiming such right, * * * but * * * where the right to a lien clearly appears,

and the sole question to be determined is whether the claimant has proceeded properly to acquire and establish his lien, the statute should be liberally construed in his favor." *Fidelity Storage Corp. v. Trussed Concrete Steel Co.* 35 App. D. C. 1 (1910); 38 W. L. R. 246, citing *James B. Lambie Co. v. Bigelow*, 34 App. D. C. 49; 37 W. L. R. 769.

See also *Alfred Richards Brick Co. v. Trott*, 23 App. D. C. 284 (1904); 32 W. L. R. 179 (holding that a single mechanics' lien should cover no more than a single building, except in a case where there are two or more buildings joined together and owned by a single person). *Alfred Richards Brick Co. v. Atkinson*, 16 App. D. C. 462 (1900); 28 W. L. R. 503. *Columbia Brick Co. v. D. C.*, 1 App. D. C. 351 (1893); 21 W. L. R. 739.

SEC. 1238. NOTICE.—Any such contractor wishing to avail himself of the provision aforesaid, whether his claim be due or not, shall file in the office of the clerk of the supreme court of the District during the construction or within three months after the completion of such building, improvement, repairs, or addition, or the placing therein or in connection therewith of any engine, machinery, or other thing so as to become a fixture, a notice of his intention to hold a lien on the property hereby declared liable to such lien for the amount due or to become due to him, specifically setting forth the amount claimed, the name of the party against whose interest a lien is claimed, and a description of the property to be charged, and the said clerk shall file said notice and record the same in a book to be kept for the purpose.

Act of July 2, 1884 (23 Stat. L. p. 64), Comp. Stat. D. C. p. 366, sec. 2.

"It is apparent that, under the statute, three essential averments are necessary to constitute a valid notice. These are, first, the amount claimed; second, the name of the party against whose interest the lien is claimed; and, third, a description of the property to be charged." *Fidelity Storage Corp. v. Trussed Concrete Steel Co.*, 35 App. D. C. 1 (1910); 38 W. L. R. 246. (See annotations to sec. 1237.) There should be a compliance with all the material requirements of the statute. *Id.*

Two or more distinct and separate notices of lien may be comprised in one single instrument of writing; and two or more notices of lien may be enforced in one and the same proceeding in equity where the parties may be the same. *Dicta* in *Alfred Richards Brick Co. v. Trott*, 23 App. D. C. 284 (1904); 32 W. L. R. 177. (See also sec. 1237.)

Construing the word "specifically" it is said: "The act undoubtedly requires explicitness and certainty; it requires that the owner of the property * * * should have full and accurate notice of the claims of those who deal with the latter upon the faith of the legal liability of the property. For that purpose it requires that 'the amount claimed' should be set forth *specifically*; but it is the amount claimed, not the items that go to make up that amount, that is required to be so stated." *Emack v. Campbell*, 14 App. D. C. 186 (1899); 27 W. L. R. 214.

As to when building is completed, see *Riggs Fire Ins. Co. v. Shedd*, 16 App. D. C. 150 (1900); 28 W. L. R. 290.

See also *Landvoight v. Melovich*, 1 App. D. C. 498 (1893); 22 W. L. R. 39. *Brown v. Waring*, 1 App. D. C. 378 (1893); 21 W. L. R. 746. *Lefler v. Forsberg*, 1 App. D. C. 36 (1893); 21 W. L. R. 585.

SEC. 1239. SUBCONTRACTOR.—Any person directly employed by the original contractor, whether as subcontractor, material man, or laborer, to furnish work or materials for the completion of the work contracted for as aforesaid, shall be entitled to a similar lien to that of the original contractor upon his filing a similar notice with the clerk of the supreme court of the District to that above mentioned, subject, however, to the conditions set forth in the following sections.

Act of July 2, 1884, sec. 1 (23 Stat. L. p. 64), Comp. Stat. D. C. p. 366, sec. 1 et seq.

Subcontractors who waive their remedy under the mechanic's lien statute at the instance of the owner, who refuses to pay the contractor until such re-

leases are executed, can not, in the absence of fraud, have the release set aside and the lien reinstated, when it appears that the amount paid the contractor was insufficient to pay the subcontractors in full. *Stevens v. Gordon*, 48 App. D. C. 604 (1919); 47 W. L. R. 230.

Woodward & Lothrop v. Union Trust Co., 49 App. D. C. 173 (1920); 48 W. L. R. 82. (See sec. 1254.)

Material men held to be contractors under section 1237, and not subcontractors under section 1239. *McLean v. Nolan*, 44 App. D. C. 1 (1915); 43 W. L. R. 386.

Winter v. Hazen-Latimer Co., 42 App. D. C. 469 (1914); 42 W. L. R. 786. (See secs. 1241, 1243.)

Prior to code: *Riggs Fire Ins. Co. v. Shedd*, 16 App. D. C. 150 (1900); 28 W. L. R. 290. *Somerville v. Williams*, 12 App. D. C. 520 (1898); 26 W. L. R. 280. *Herrell v. Donovan*, 7 App. D. C. 322 (1895); 23 W. L. R. 821. *Leitch v. Emergency Hospital*, 6 App. D. C. 247 (1895); 23 W. L. R. 305.

SEC. 1240. CONDITIONS.—All such liens in favor of parties so employed by the contractor shall be subject to the terms and conditions of the original contract except such as shall relate to the waiver of liens and shall be limited to the amount to become due to the original contractor and be satisfied, in whole or in part, out of said amount only; and if said original contractor, by reason of any breach of the contract on his part, shall be entitled to recover less than the amount agreed upon in his contract, the liens of said parties so employed by him shall be enforceable only for said reduced amount, and if said original contractor shall be entitled to recover nothing said liens shall not be enforceable at all.

Winter v. Hazen-Latimer Co., 42 App. D. C. 469 (1914); 42 W. L. R. 786. *Insurance Co. v. Shedd*, 16 App. D. C. 150 (1900); 28 W. L. R. 290. *Herrell v. Donovan*, 7 App. D. C. 322 (1895); 23 W. L. R. 821.

SEC. 1241. NOTICE TO OWNER.—The said subcontractor or other person employed by the contractor as aforesaid, besides filing a notice with the clerk of the supreme court as aforesaid, shall serve the same upon the owner of the property upon which the lien is claimed, by leaving a copy thereof with said owner or his agent, if said owner or agent be a resident of the District, or if neither can be found, by posting the same on the premises; and on his failure to do so, or until he shall do so, the said owner may make payments to his contractor according to the terms of his contract, and to the extent of such payments the lien of the principal contractor shall be discharged and the amount for which the property shall be chargeable in favor of the parties so employed by him reduced.

See annotations to section 1240.

Lefler v. Forsberg, 1 App. D. C. 36 (1893); 21 W. L. R. 585.

SEC. 1242. OWNER'S DUTY.—After notice shall be filed by said party employed under the original contractor and a copy thereof served upon the owner or his agents as aforesaid, the owner shall be bound to retain out of any subsequent payments becoming due to the contractor a sufficient amount to satisfy any indebtedness due from said contractor to the said subcontractor, or other person so employed by him, secured by lien as aforesaid, otherwise the said party shall be entitled to enforce his lien to the extent of the amount so accruing to the principal contractor.

"The statute limits the right of a subcontractor to a lien upon money due the contractor from the owner at the time notice is given the owner." *Winter v. Hazen-Latimer Co.*, 42 App. D. C. 469 (1914); 42 W. L. R. 786. Where

the owner pays the contractor in full, without notice of subcontractor's right, the subcontractor has no lien upon moneys subsequently accruing to contractor's surety who completes the work under the power reserved to it in the bond. *Ib.*

Subcontractor's rights are "dependent on the contract between the owner and the builder and on the state of the accounts between them; and * * * the subcontractors were bound by all the terms and conditions of that contract." *Riggs Fire Ins. Co. v. Shedd*, 16 App. D. C. 150 (1900); 28 W. L. R. 290. But the subcontractor is equally entitled to the benefits of the contract as far as it inures to his advantage. *Ib.* (See annotations to sec. 1243.)

SEC. 1243. SUBCONTRACTOR ENTITLED TO KNOW TERMS OF CONTRACT.—Any subcontractor or other person employed by the contractor as aforesaid shall be entitled to demand of the owner or his authorized agent a statement of the terms under which the work contracted for is being done and the amount due or to become due to the contractor executing the same, and if the owner or his agent shall fail or refuse to give the said information, or willfully state falsely the terms of the contract or the amounts due or unpaid thereunder, the said property shall be liable to the lien of the said party demanding said information, in the same manner as if no payments had been made to the contractor before notice served on the owner as aforesaid.

"The subcontractor should acquaint himself with the terms and conditions of the building contract. This information is made available by statute * * * . In the absence of anything to the contrary, we must assume that the plaintiff possessed this information." *Winter v. Hazen-Latimer Co.*, 42 App. D. C. 469 (1914); 42 W. L. R. 786. See also annotations to sec. 1242.

SEC. 1244. ADVANCE PAYMENTS.—If the owner, for the purpose of avoiding the provisions hereof, and defeating the lien of the subcontractor or other person employed by the contractor, as aforesaid, shall make payments to the contractor in advance of the time agreed upon therefor in the contract, and the amount still due or to become due to the contractor shall be insufficient to satisfy the liens of the subcontractors or others so employed by the contractor, the property shall remain subject to said liens in the same manner as if such payments had not been made.

Riggs Fire Ins. Co. v. Shedd, see sec. 1242.

SEC. 1245. PRIORITY OF LIEN.—The lien hereby given shall be preferred to all judgments, mortgages, deeds of trusts, liens, and incumbrances which attach upon the building or ground affected by said lien subsequently to the commencement of the work upon the building, as well as to conveyances executed, but not recorded, before that time, to which recording is necessary, as to third persons; except that nothing herein shall affect the priority of a mortgage or deed of trust given to secure the purchase money for the land, if the same be recorded within ten days from the date of the acknowledgment thereof. When a mortgage or deed of trust of real estate securing advances thereafter to be made for the purpose of erecting buildings and improvements thereon is given, or when an owner of lands contracts with a builder for the sale of lots and the erection of buildings thereon, and agrees to advance moneys toward the erection of such buildings, the lien hereinbefore authorized shall have priority to all advances made after the filing of said notices of lien, and the lien shall attach to the right, title, and interest of the owner in said build-

ing and land to the extent of all advances which shall have become due after the filing of such notice of such lien, and shall also attach to and be a lien on the right, title, and interest of the person so agreeing to purchase said land at the time of the filing of said notices of lien. When a building shall be erected or repaired by a lessee or tenant for life or years, or a person having an equitable estate or interest in such building or land on which it stands, the lien created by this act shall only extend to and cover the interest or estate of such lessee, tenant, or equitable owners.

Act of July 2, 1884, secs. 3-4 (23 Stat. L. p. 64), Comp. Stat. D. C. p. 367, secs. 3-4.

Albaugh v. Litho-Marble Decorating Co., 14 App. D. C. 113 (1899); 27 W. L. R. 130.

Anglo American Assoc. v. Campbell, 13 App. D. C. 581 (1898); 27 W. L. R. 2.

SEC. 1246. HOW LIEN ENFORCED.—The proceeding to enforce the lien hereby given shall be a bill in equity, which shall contain a brief statement of the contract on which the claim is founded, the amount due thereon, the time when the notice was filed with the clerk, and a copy thereof served on the owner or his agent, if so served, and the time when the building or the work thereon was completed, with a description of the premises and other material facts; and shall pray that the premises be sold and the proceeds of sale applied to the satisfaction of the lien. If such suit be brought by any person entitled, other than the principal contractor, the latter shall be made a party defendant, as well as all other persons who may have filed notices of liens, as aforesaid. All or any number of persons having liens on the same property may join in one suit, their respective claims being distinctly stated in separate paragraphs; and if several suits are brought by different claimants and are pending at the same time, the court may order them to be consolidated.

Woodward & Lothrop v. Union Trust Co., 49 App. D. C. 173 (1920); 48 W. L. R. 82.

Prior to code, see *Emack v. Campbell*, 14 App. D. C. 186 (1899); 27 W. L. R. 214. *Emack v. Rushenberger*, 8 App. D. C. 249 (1896); 24 W. L. R. 486. *Brown v. Waring*, 1 App. D. C. 373 (1893); 21 W. L. R. 746. *Lefler v. Forsberg*, 1 App. D. C. 36 (1893); 21 W. L. R. 585.

SEC. 1247. DECREE OF SALE.—If the right of the complainant, or of any of the parties to the suit, to the lien herein provided for shall be established, the court shall decree a sale of the land and premises or the estate and interest therein of the person who, as owner, contracted for the erection, repair, improvement of, or addition to the building, as aforesaid.

SEC. 1248. SUBCONTRACTOR PREFERRED TO CONTRACTOR.—If the original contractor and the persons contracting or employed under him shall both have filed notices of liens, as aforesaid, the latter shall first be satisfied out of the proceeds of sale before the original contractor, but not in excess of the amount due him, and the balance, if any, of said amount shall be paid to him.

SEC. 1249. DISTRIBUTION.—If one, or some only, of the persons employed under the original contractor shall have served notice on the owner, as aforesaid, before payments made by him to the original contractor, said party or parties shall be entitled to priority of satisfaction out of said proceeds to the amount of such payments;

but, subject to this provision, if the proceeds of sale, after paying thereout the costs of the suit, shall be insufficient to satisfy the liens of said parties employed under the original contractor the said proceeds shall be distributed ratably among them to the extent of the payments accruing to the original contractor subsequently to the service of notice on the owner by said parties, as aforesaid.

SEC. 1250. SEVERAL BUILDINGS.—In case of labor done or materials furnished for the erection or repair of two or more buildings joined together and owned by the same person or persons, it shall not be necessary to determine the amount of work done or materials furnished for each separate building, but only the aggregate amount upon all the buildings so joined, and the decree may be for the sale of all the buildings and the land on which they are erected as one building, or they may be sold separately if it shall seem best to the court.

Act of July 2, 1884, sec. 6 (23 Stat. L., p. 64), Comp. Stat. D. C., p. 367, sec. 5. See *Brick Co. v. Trott* (annotated under sec. 1237).

SEC. 1251. WHEN SUIT TO BE COMMENCED.—Any person entitled to a lien, as aforesaid, may commence his suit to enforce the same at any time within a year from and after the filing of the notice aforesaid or within six months from the completion of the building or repairs aforesaid, on his failure to do which the said lien shall cease to exist, unless his said claim be not due at the expiration of said periods, in which case the action must be commenced within three months after the said claim shall have become due.

Act of July 2, 1884, sec. 7 (23 Stat. L., p. 64), Comp. Stat. D. C., p. 368, sec. 7. *Emack v. Campbell*, 14 App. D. C. 185 (1899) ; 27 W. L. R. 214. *Brown v. Waring*, 1 App. D. C. 378 (1893) ; 21 W. L. R. 746.

SEC. 1252. EXTENT OF GROUND BOUND BY LIEN.—If there be any contest as to the dimensions of the ground claimed to be subjected to the lien aforesaid, the court shall determine the same upon the evidence and describe the same in the decree of sale.

Act of July 2, 1884, sec. 9 (23 Stat. L., p. 64), Comp. Stat. D. C., p. 368, sec. 9.

SEC. 1253. ENTRY OF SATISFACTION.—Whenever any person having a lien by virtue hereof shall have received satisfaction of his claim and cost, he shall, on the demand, and at the cost of the person interested, enter said claim satisfied, in the clerk's office aforesaid, and on his failure or refusal so to do he shall forfeit fifty dollars to the party aggrieved, and all damages that the latter may have sustained by reason of such failure or refusal.

Act of July 2, 1884, sec. 10 (23 Stat. L. p. 64), Comp. Stat. D. C. p. 368, sec. 10.

SEC. 1254. PAYMENT INTO COURT AND RELEASE.—In any suit to enforce a lien hereunder, the owner of the building and premises to which such lien may have attached, as aforesaid, may be allowed to pay into court the amount claimed by the lienor, and such additional amount, to cover interest and costs, as the court may direct, or he may file a written undertaking, with two or more sureties, to be approved by the court, to the effect that he and they will pay the judgment that may be recovered and costs, which judgment shall be rendered against all the persons so undertaking. On the payment of said money into court, or the approval of such undertaking, the

property shall be released from such lien, and any money so paid in shall be subject to the final decree of the court. No such undertaking shall be approved by the court until the complainant shall have had at least two days' notice of the defendant's intention to apply to the court therefor, which notice shall give the names and residences of the persons intended to be offered as sureties and the time when the motion for such approval will be made, and such sureties shall make oath, if required, that they are worth, over and above all debts and liabilities, double the amount of said lien. The complainant may appear and object to such approval.

"The evident purpose of sections 1254 and 1255 is to enable the owner, against whose building or fixtures a lien has been asserted, to be relieved of the embarrassment of the lien through the payment into court of a sum equal to the amount of the lien with interest and costs, or the filing of an undertaking to cover that amount. Where admittedly an amount is due the principal contractor, and the lien is asserted by a subcontractor, there is no contest between the owner and the subcontractor; the issue being restricted to the contractor and subcontractor. If the owner does not take advantage of these provisions of the code for the release of the lien, the statute imposes upon him no duty to notify the contractor of the pendency of the subcontractor's suit." *Woodward & Lothrop v. Union Trust Co.*, 49 App. D. C. 173 (1920); 48 W. L. R. 82. "It will be observed that no notice is required under section 1254, where a money payment is made by the owner; the theory evidently being that cash speaks for itself, and that no one possibly could be prejudiced by the substitution of cash for the obligation of the owner to pay the amount due under the contract. It was for this reason that section 1255 makes no mention of a cash payment." *Ib.*

SEC. 1255. UNDERTAKING TO DISCHARGE LIENS BEFORE SUIT.—Such an undertaking as above mentioned may be offered before any suit brought in order to discharge the property from existing liens, in which case notice shall be given as aforesaid to the parties whose liens it is sought to have discharged, and the same proceedings shall be had as above directed in relation to the undertaking to be given after the commencement of the suit, and said undertaking shall be to the effect that the owner and his said sureties will pay any judgment that may be rendered in any suit that may thereafter be brought for the enforcement of said lien.

See annotation to section 1254.

Act of July 2, 1884, sec. 11 (23 Stat. L., p. 64), Comp. Stat. D. C., p. 368, sec. 11.

See also *Anglo-American Svgs. Assoc. v. Campbell*, 13 App. D. C. 581 (1898); 27 W. L. R. 2.

SEC. 1256. DECREE AGAINST SURETIES.—If such undertaking be approved before any suit brought, such suit shall be a suit in equity against the owner, to which the sureties may be made parties; if the undertaking be approved after suit brought, the said sureties shall ipso facto become parties to the suit, and in either case the decree of the court shall be against the sureties as well as the owner.

Act of July 2, 1884 (23 Stat. L. p. 64), Comp. Stat. D. C. p. 368, sec. 11.

SEC. 1257. NO ACTION BY SUBCONTRACTOR AGAINST OWNER.—No subcontractor, material man, or workman employed under the original contractor shall be entitled to a personal judgment or decree against the owner of the premises for the amount due to him from said original contractor, except upon a special promise of such owner, in writing, for a sufficient consideration, to be answerable for the same.

Mathews v. Libbey Bros., 42 App. D. C. 272 (1914); 42 W. L. R. 323, holding this section applicable although the owner's contract with the contractor and the latter's contract with the subcontractor were to be performed in Maryland.

SEC. 1258. JUDGMENT FOR DEFICIENCY UPON A SALE.—In any suit brought to enforce a lien by virtue of the provisions aforesaid, if the proceeds of the property affected thereby shall be insufficient to satisfy such lien, a personal judgment for the deficiency may be given in favor of the lien or against the owner of the premises or the original contractor, as the case may be, whichever contracted with him for the labor or materials furnished by him, provided such person be a party to the suit and shall have been personally served with process therein.

Act of July 2, 1884, sec. 5 (23 Stat. L. p. 64), Comp. Stat. D. C. p. 367, sec. 5.

Where property was sold under a deed of trust, it was properly held that a personal judgment for the deficiency should be rendered against the former owners who contracted for the repairs. *Davidson v. E. F. Brooks Co.*, 46 App. D. C. 457 (1917); 45 W. L. R. 181; certiorari denied, 245 U. S. 265. See also *McCarthy v. Holtman*, 19 App. D. C. 150 (1901); 30 W. L. R. 23. *Emack v. Rushenberger*, 8 App. D. C. 249 (1896); 24 W. L. R. 486.

SEC. 1259. WHARVES AND LOTS.—Any person who shall furnish materials or labor in filling up any lot or in constructing any wharf thereon, or dredging the channel of the river in front of any wharf, under any contract with the owner, shall be entitled to a lien for the value of such work or materials on said lot and wharf upon the same conditions and to be enforced in the same manner as in the case of work done in the erection of buildings, as hereinbefore provided.

Act of July 2, 1884, sec. 12 (23 Stat. L. p. 64), Comp. Stat. D. C. p. 369, sec. 12.

SEC. 1260. OTHER LIENS.—Any mechanic or artisan who shall make, alter, or repair any article of personal property at the request of the owner shall have a lien thereon for his just and reasonable charges for his work done and materials furnished, and may retain the same in his possession until said charges are paid; but if possession is parted with by his consent such lien shall cease.

Act of July 2, 1884, sec. 13 (23 Stat. L. p. 64), Comp. Stat. D. C., p. 369, sec. 13.

SEC. 1261. INNKEEPER.—Every innkeeper, keeper of a boarding house, or house of private entertainment shall have a lien upon and may retain possession of the baggage and effects of any guest or boarder for the amount which may be due him from such guest for board and lodging until such amount is paid.

SEC. 1262. LIVERYMAN.—It shall be lawful for all persons keeping or boarding any animals at livery within the District, under any agreement with the owner thereof, to detain such animals until all charges under such agreement for the care, keep, or board of such animals shall have been paid: *Provided, however,* That notice in writing shall first be given to such owner in person or at his last known place of residence of the amount of such charges and the intention to detain such animal or animals until such charges shall be paid. Garage keepers shall also have a lien for their charges for storage, repairs, and supplies of or concerning motor vehicles, when such charges are incurred by an owner or conditional vendee of such motor vehicles, and may detain such motor vehicles at any time they may have lawful possession thereof, after giving a notice similar to that provided for liverymen. If said charges are not paid in thirty

days said lien may be enforced in the manner provided in section 1264.

Act of April 19, 1920 (41 Stat. L., pt. 1, p. 568), repealing 31 Stat. L., pt. 1, p. 1189.

Act of May 31, 1892 (27 Stat. L. p. 40).

SEC. 1263. ENFORCEMENT BY SALE.—If the amount due and for which a lien is given by any of the last three sections is not paid after the end of a month after the same is due, and the property bound by said lien does not exceed the sum of fifty dollars, then the party entitled to such lien, after demand of payment upon the debtor, if he be within the District, may proceed to sell the property so subject to lien at public auction, after giving notice once a week for three successive weeks in some daily newspaper published in the District, and the proceeds of such sale shall be applied, first, to the expenses of such sales and the discharge of such lien, and the remainder, if any, shall be paid over to the owner of the property.

SEC. 1264. ENFORCEMENT BY BILL IN EQUITY.—If the value of the property so subject to lien shall exceed the sum of fifty dollars, the proceeding to enforce such lien shall be by bill or petition in equity, and the decree, which shall be rendered according to the due course of proceedings in equity, besides subjecting the thing upon which the lien was attached to sale for the satisfaction of the plaintiff's demand, shall adjudge that the plaintiff recover his demand against the defendant from whom such claim is due, and may have execution therefor as at law.

R. S. D. C., sec. 808, Comp. Stat. D. C. p. 74, sec. 3.

Sec. 808, R. S. D. C., providing that the proceeding to enforce any lien shall be by bill in equity, does not apply to the lien for rent given a landlord upon the goods and chattels of his tenant upon the leased premises, as the act provides adequate methods at law to enforce the landlord's lien. *The Richmond v. Cake*, 1 App. D. C. 447 (1893) ; 21 W. L. R. 819.

CHAPTER FORTY-ONE

LIMITATION OF ACTIONS

SEC. 1265. PERIODS OF LIMITATIONS.—No action shall be brought for the recovery of lands, tenements, or hereditaments after fifteen years from the time the right to maintain such action shall have accrued; nor on any executor's or administrator's bond after five years from the time of the right of action accrued thereon; nor on any other bond or single bill, covenant, or other instrument under seal after twelve years after the accruing of the cause of action thereon; nor upon any simple contract, express or implied, or for the recovery of damages for any injury to real or personal property, or for the recovery of personal property or damages for its unlawful detention after three years from the time when the right to maintain any such action shall have accrued; nor for any statutory penalty or forfeiture, or for libel, slander, assault, battery, mayhem, wounding malicious prosecution, false arrest or false imprisonment after one year from the time when the right to maintain any such action shall have accrued; and no action the limitation of which is not otherwise specially prescribed in this section shall be brought after three years from the time when the right to maintain such action shall have accrued: *Provided*, That if any person entitled to maintain any of the actions aforesaid shall be at the time of the accruing of such right of action under twenty-one years of age, non compos mentis, or imprisoned, such person or his proper representative shall be at liberty to bring such action within the respective times in this section limited after the removal of such disability, except that where any person entitled to maintain an action for the recovery of lands, tenements, or hereditaments, or upon any instrument under seal, shall be at the time such right of action shall accrue under any of the disabilities aforesaid, such person or his proper representative, *except where otherwise provided herein*, may bring such action within five years after the removal of such disability, and not thereafter.

32 Stat. L., pt. 1, p. 542.

21 James I, ch. 16; Md. Act of 1715, ch. 23; Md. Act of 1729, ch. 24; Comp. Stat. D. C. pp. 358 et seq.

See secs. 111, 348.

In an action for negligence "the minor * * * has the entire period of his minority and three years thereafter within which to institute the action," and, if the action is brought within his minority, he is not confined to three years after the accrual of the right. *Carson v. Jackson*, 52 App. D. C. 51 (1922); 50 W. L. R. 403.

Where a broker is engaged to procure a loan on real estate, the statute of limitations, as far as it affects his right to recover commissions, runs from the time that he furnishes a person ready, able, and willing to make the loan, and not from the time of the contract of employment. *Daniel v. Drury*, 50 App. D. C. 107 (1920); 48 W. L. R. 472.

Payments on account as tolling statute. *National Savings & Tr. Co. v. Ryan*, 49 App. D. C. 159 (1919); 48 W. L. R. 22.

As to effect of lapse of statutory period of limitation on power of sale under deed of trust, see *Talbott v. Hill*, 49 App. D. C. 96 (1919); 47 W. L. R. 743. Statute of limitations is "one of repose, and not one of payment or cancellation. It is a bar to the remedy only and does not extinguish or even impair the obligation of the debtor." *Ib.*, citing *Hall v. D. C.*, 47 App. D. C. 552 (1918). The statute is available only "as a defense, and can never be asserted as a cause of action on behalf of the debtor, or for conferring upon him a right of action." *Ib.*

Limitations as affecting right to recover for continuing services under either express or implied contract, see *McCurley v. National Savings & Trust Co.*, 49 App. D. C. 10 (1919). *Booger v. Roach*, 25 App. D. C. 324 (1905); 33 W. L. R. 326.

As to actions to recover penalty or forfeiture, see *Kemp v. Medical Supervisors*, 46 App. D. C. 173 (1917); 45 W. L. R. 210. (See also *Pavarini v. Guaranty Co.*, 36 App. D. C. 348 (1911); 39 W. L. R. 138.) Statute as affecting right of medical supervisors to revoke license of physician on his conviction of offense involving moral turpitude, see *ib.*

"An action against the commissioners to compel the execution and delivery of a tax deed is not one for the recovery of the possession of land" and does not come within the 15 year limitation, but within the omnibus clause of the section. *Luchs v. Christman*, 42 App. D. C. 326 (1914); 42 W. L. R. 360.

"A defendant can not avail himself of the bar of the statute of limitations, if it appears that he has done anything that would tend to lull the plaintiff into inaction, and thereby permit the limitation prescribed by the statute to run against him." *Hornblower v. Geo. Wash'n University*, 31 App. D. C. 64 (1908); 36 W. L. R. 283.

Statute does not begin to run on a promissory note until the day after it becomes due. *Ambrose v. Brown*, 42 App. D. C. 25 (1914); 42 W. L. R. 181. Cf. *Macfarland v. Moore*, 32 App. D. C. 213 (1908); 37 W. L. R. 31.

Adverse possession for 15 years confers title, and section 111 has no application in an action of ejectment based upon adverse possession. *McMillan v. Fuller*, 41 App. D. C. 384 (1914); 42 W. L. R. 51.

Where the cause of action remains the same, an amendment changing it in a different form is not open to the defense of the statute of limitations. *Beasley v. Balt. & P. R. R. Co.*, 27 App. D. C. 595 (1906); 34 W. L. R. 430. See also *D. C. v. Frazer*, 21 App. D. C. 154 (1903); 31 W. L. R. 83.

If testator's right of entry is barred by adverse possession and statute of limitation, a devisee takes nothing under the devise. *Dangerfield v. Williams*, 26 App. D. C. 508 (1906); 34 W. L. R. 50.

The Maryland statute of limitations of 1715 "was repealed or superseded by the District Code." *McKay v. Bradley*, 26 App. D. C. 449 (1906); 34 W. L. R. 33. "The section (1265) is lengthy and prescribes periods of limitation for many actions, civil and criminal, specially enumerated therein. The clause aforesaid (not otherwise provided for) was apparently intended to remedy a possible omission of some action that might have been properly embraced in that enumeration. Foreign judgments were provided for specially in section 1267," and therefore, are not embraced in section 1265. *Ib.*

In a suit for personal injuries sustained as a result of three separate acts, two of which are barred by limitations, evidence of injuries sustained by any but the one act not barred is inadmissible. *Jackson v. Emmons*, 25 App. D. C. 146 (1905); 33 W. L. R. 165; affirmed in 203 U. S. 578.

Application, by analogy, of statute of limitations to equitable actions, see *Columbian University v. Taylor*, 25 App. D. C. 124 (1905); 33 W. L. R. 141. *Washington Loan & T. Co. v. Darling*, 21 App. D. C. 132 (1903); 31 W. L. R. 129. *Sis v. Boorman*, 11 App. D. C. 116 (1897); 25 W. L. R. 431.

Effect of statute on debt payable in independent installments. See *Washington L. & Tr. Co. v. Darling*, supra.

By the enactment of the section 1265 of the code, the sections 1 and 2 of the statute of James (21 James I, ch. 16), were repealed, and new periods of limitations substituted therefor. *Gwin v. Brown*, 21 App. D. C. 295 (1903); 31 W. L. R. 238.

Prior to code, see *Tuohy v. Trail*, 19 App. D. C. 79 (1901); 30 W. L. R. 3 (agreement to compensate by will for services rendered). *Huysman v. Evening Star*, 12 App. D. C. 586 (1898); 26 W. L. R. 372 (as to when suit is deemed as filed so as to arrest the running of the statute). *Ross v. Fickling*, 11 App. D. C. 442 (1897); 25 W. L. R. 806 (mutual accounts). *D. C. v. Krause*, 11

App. D. C. 398 (1897); 25 W. L. R. 812 (adverse possession). *Cropley v. Eyster*, 9 App. D. C. 373 (1896); 24 W. L. R. 829 (on petition of holder of one note to participate in proceeds of sale of mortgaged property by foreclosure at the instance of the holder of the other note, the bar of limitations is not that applicable to an action on the note, but that which applies to the remedy for the enforcement of an equitable right under the mortgage; and the same period that would bar an ejectment is required). *Glenn v. Sothoron*, 4 App. D. C. 125 (1894); 22 W. L. R. 649 (action to recover call on stock). *Durant v. Murdock*, 3 App. D. C. 114 (1894); 22 W. L. R. 349 (as applied to pleas of set-off and recoupment). *Lewis v. Denison*, 2 App. D. C. 387 (1894); 22 W. L. R. 191 (effect of fraudulent concealment of cause of action). *Mann v. Cooper*, 2 App. D. C. 226 (1893); 22 W. L. R. 98 (judgments). *Willard v. Wood*, 1 App. D. C. 44 (1893); 21 W. L. R. 597, affirmed in 164 U. S. 502 (on a contract which is a simple contract in this jurisdiction but which has the effect of a specialty in the place in which it was made).

SEC. 1266. SUITS AGAINST DECEDENTS' ESTATES.—In suits against the estate of a deceased person, in computing the time of limitation the interval, *not exceeding two years*, between the death of the deceased and the granting of letters testamentary or of administration shall not be counted as part of said time of limitation.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 542).

"Under section 1266 of the code, the time between the death of the deceased and the granting of letters testamentary is not to be counted in determining whether or not the statute of limitations has run." *National Savings & Tr. Co. v. Ryan*, 49 App. D. C. 159 (1919); 48 W. L. R. 22. See also *Drury v. Gorrell*, 44 App. D. C. 518 (1916); 44 W. L. R. 147.

Berry & Whitmore Co. v. Dante, 43 App. D. C. 110 (1915); 43 W. L. R. 88 (proving claim against decedent's estate under section 336, as suspending running of limitations).

Tucker v. Nebeker, 2 App. D. C. 326 (1894); 22 W. L. R. 143.

SEC. 1267. FOREIGN JUDGMENTS.—Every action upon a judgment or decree rendered in any State or Territory of the United States or in any foreign country shall be barred if by the laws of such State, Territory, or foreign country such action would there be barred and the judgment or decree be incapable of being otherwise enforced there.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 542).

"This section prescribes two rules of limitation. By the first all judgments barred by the law of the place of recovery are barred in the District. By the second, if not barred by the law of the place of recovery, still no action can be brought on any such judgment rendered more than 10 years before the commencement of the action. On June 30, 1902, section 1267 was amended by striking therefrom the last part * * * in which the second rule aforesaid is embodied." *McKay v. Bradley*, 26 App. D. C. 449 (1906); 34 W. L. R. 33. "Section 1267, as amended, has no other effect than to bar an action upon a judgment of another State that is barred, at the time of the commencement of the action, by the laws of that State." *Ib.*

SEC. 1268. ACTION BY THE UNITED STATES.—None of the *foregoing* provisions of *this chapter* shall apply to any action in which the United States is the real and not merely the nominal plaintiff.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 542).

SEC. 1269. ABSENCE OF DEFENDANT.—If, when a cause of action accrues against a person who is a resident of the District of Columbia, he is out of the District or has absconded or concealed himself, the period limited for the bringing of the action shall not begin to run until he comes into the District or while he is so absconded or concealed; and if after the cause of action accrues he abscond or conceal himself, the time of such absence or concealment shall not be com-

puted as any part of the period within which the action must be brought.

SEC. 1270. ACTION STAYED BY INJUNCTION.—Where the bringing of an action has been stayed by an injunction or other order of a court of justice, or by statutory prohibition, the time of such stay shall not be part of the time limited for the commencement of the action.

SEC. 1271. NEW PROMISE TO BE IN WRITING, AND SO FORTH.—In actions of debt or upon the case grounded upon any simple contract, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract whereby to take any case out of the operation of the statute of limitations or to deprive any party of the benefit thereof unless such acknowledgment or promise shall be made or contained by or in some writing to be signed by the party chargeable thereby: *Provided*, That nothing herein contained shall alter or take away, or lessen the effect of any payment of any principal or interest made by any person whatsoever: *Provided, also*, That in actions to be commenced against two or more joint contractors, or executors, or administrators, if it shall appear at the trial, or otherwise, that the plaintiff, though barred by the statute of limitations as to one or more of such joint contractors, or executors, or administrators, shall nevertheless be entitled to recover against any other or others of the defendants by virtue of a new acknowledgment or promise or otherwise, judgment may be given for the plaintiff as to such defendant or defendants against whom he shall recover. No indorsement or memorandum of any payment hereafter written or made upon any promissory note, bill of exchange, or other writing, by or on behalf of the party to whom such payment shall purport to be made, shall be deemed sufficient proof of such payment so as to take the case out of the operation of the statute of limitations.

No action shall be maintained whereby to charge any person upon any acknowledgment of, or promise to pay, any debt contracted during infancy made after full age, except for necessities, unless such acknowledgment or promise shall be made by some writing signed by the party to be charged therewith: Provided, That nothing herein contained shall affect ratification by conduct.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 542).

"A distinct and unequivocal acknowledgment by the debtor of the debt as a still subsisting personal obligation constitutes an implied promise to pay it, and this, 'according to all the authorities, is all that is required to remove the statute in the case of a simple contract'" (referring to such a promise in writing). *Green v. Reeves*, 47 App. D. C. 83 (1917); 45 W. L. R. 789, citing *Ruppert v. Beavans*, 2 App. D. C. 298, and *Catholic University v. Waggaman*, 32 App. D. C. 307; 37 W. L. R. 42. See also *Strong v. Andros*, 34 App. D. C. 278 (1910); 38 W. L. R. 31. *Hornblower v. George Washington University*, 31 App. D. C. 64 (1908); 36 W. L. R. 283.

"To effect a confirmation of a contract entered into during infancy, the act must have been done with knowledge that the contract was voidable." *Manning v. Gannon*, 44 App. D. C. 98 (1915); 43 W. L. R. 759. See also *Gannon v. Manning*, 42 App. D. C. 206 (1914); 42 W. L. R. 295.

As to use of both written and oral acknowledgment, see *Shelley v. Wescott*, 23 App. D. C. 135 (1904); 32 W. L. R. 68.

Prior to code, see *Bean v. Wheatley*, 13 App. D. C. 473 (1898); 26 W. L. R. 805. *Reed v. Tierney*, 12 App. D. C. 165 (1898); 26 W. L. R. 133. *Cropley v. Eyster*, 9 App. D. C. 373 (1896); 24 W. L. R. 829. *Pumphrey v. Boggan*, 8 App. D. C. 449 (1896); 24 W. L. R. 303. *Flannery v. Maine Red Granite Co.*, 3 App.

D. C. 395 (1894) ; 22 W. L. R. 369. *Mann v. Cooper*, 2 App. D. C. 226 (1894) ; 22 W. L. R. 98. *Cooper v. Olcott*, 1 App. D. C. 226 (1893) ; 21 W. L. R. 616.

SEC. 1272. DIRECTIONS AS TO DEBTS IN A WILL.—No provision in the will of a testator devising his real estate, or any part thereof, subject to the payment of his debts, or charging the same therewith, shall prevent the statute of limitations from operating against such debts, unless it plainly appears to be the testator's intention that it shall not so operate.

See sections 94, 325.

CHAPTER FORTY-TWO

MANDAMUS

SEC. 1273. HOW APPLIED FOR.—All applications for granting writs of mandamus shall be commenced by petition, verified by affidavit of the applicant, setting forth fully the ground of his application.

See sections 68, 618, 1574.

Bundy v. Darling, 25 App. D. C. 459, 33 W. L. R. 434.

Dancy v. Clark, 24 App. D. C. 487, 33 W. L. R. 18.

For use of mandamus in particular cases (since 1910) see:

U. S. ex rel. *Thomson v. Custis*, 35 App. D. C. 247 (to board of medical advisors to compel issuance of license to practice).

U. S. ex rel. *Phillips v. Ballinger*, 35 App. D. C. 520 (to Secretary of Interior to vacate order disbaring attorney).

Rudolph v. Moshewvel, 37 App. D. C. 76 (to commissioners, District of Columbia, to compel medical board to examine fireman dismissed for physical disability).

U. S. ex rel. *Hammond v. Custis*, 37 App. D. C. 449 (to board of medical advisors to compel issuance of license to practice).

U. S. ex rel. *Todd v. Gongwer*, 37 App. D. C. 555 (to Auditor of Treasury to compel consideration of claim for longevity pay).

U. S. ex rel. *Moser v. Myer*, 38 App. D. C. 13 (to Secretary of Navy to compel placing of relator's name on retired list).

U. S. ex rel. *McKenzie v. Fisher*, 39 App. D. C. 7 (to Secretary of Interior to compel issuance of land patent). See also U. S. ex rel. *Bowlegs v. Lane*, 43 App. D. C. 495; *Lane v. Duncan*, 44 App. D. C. 63; *Hoglund v. Lane*, 44 App. D. C. 310 (affirmed in 244 U. S. 174); *Handel v. Lane*, 45 App. D. C. 389; U. S. ex rel. *Coal Co. v. Lane*, 46 App. D. C. 443; U. S. ex rel. *McDonald v. Scalo*, 49 D. C. 234.

Kalbfus v. Siddons, 42 App. D. C. 310 (to compel restoration to public office).

Prall v. Stafford, 42 App. D. C. 383 (to compel justice of supreme court, D. C., to enter final decree on mandate of Court of Appls.).

U. S. ex rel. *Newman v. Railway Co.*, 42 App. D. C. 417 (to compel respondent to condemn land for street extension).

U. S. ex rel. *Cement Co. v. I. C. Co.*, 42 App. D. C. 515 (to compel Interstate Commerce Commission to take jurisdiction and proceed in complaint filed by relator before it).

Persing v. Daniels, 43 App. D. C. 470 (to compel restoration of employee to service of United States).

U. S. ex rel. *Reynolds v. Lane*, 45 App. D. C. 50 (to compel Secretary of Interior to approve or disapprove lease).

Ewing v. U. S. ex rel. Car Co., 45 App. D. C. 185 (to Commissioner of Patents to compel direction of interference in patent cases); reversed in 244 U. S. 1.

Blair v. U. S. ex rel. Hellman, 45 App. D. C. 353 (to school board to compel restoration of relator as a teacher).

Richards v. Davison, 45 App. D. C. 397 (to assessor, District of Columbia, to compel issuance of license to conduct dance hall. See also U. S. ex rel. *Russell v. D. C.*, 50 App. 296).

U. S. ex rel. *Schwerdtfeger v. Brownlow*, 45 App. D. C. 412 (to commissioners, District of Columbia, to compel placing of relator's name on fireman's pension roll).

Hight v. McCoy, 46 App. D. C. 238 (to compel justice, supreme court, District of Columbia, to sign bill of exceptions).

U. S. ex rel. *Ashley v. Roper*, 48 App. D. C. 69 (to compel Secretary of Treasury to abrogate decision construing act of Congress).

LeCrone *v.* McAdoo, 48 App. D. C. 181, dismissed, 253 U. S. 217 (to compel Secretary of the Treasury to pay over fund to petitioner).

U. S. ex rel. McDuffie *v.* Hawley, 50 App. D. C. 137 (to board of dental examiners to compel issuance of license to dentist).

U. S. ex rel. Anderson *v.* Simon, 50 App. D. C. 199 (to school board to restore teacher).

Weeks *v.* U. S. ex rel. Creary, 50 App. D. C. 195 (to Secretary of War to vacate discharge and restore to rank in Army).

U. S. ex rel. Norris *v.* Forbes, 51 App. D. C. 248 (to Director of Bureau of War Risk Insurance to compel payment of insurance).

Robertson *v.* U. S. ex rel. Baff, 52 App. D. C. 177 (to review proceedings disbaring attorney from Patent Office and compel restoration).

SEC. 1274. RULE ON DEFENDANT.—Upon the filing of such petition the court may lay a rule requiring the defendant therein named to show cause, within such time as the court may deem proper, why a writ of mandamus should not issue as prayed, a copy of which rule shall be served upon such defendant by a day to be therein limited.

U. S. ex rel. Holzen Dorf *v.* Hay, 20 App. D. C. 576, 30 W. L. R. 825.

SEC. 1275. DEFENDANT'S ANSWER.—The defendant, by the day named in such order, unless for cause shown the court shall extend the time, shall file an answer to such petition, fully setting forth all the defenses upon which he intends to rely in resisting such application, which shall be verified by his affidavit.

U. S. ex rel. West *v.* Hitchcock, 19 App. D. C. 333, 30 W. L. R. 186.

SEC. 1276. PLEADINGS AND FURTHER PROCEEDINGS.—The petitioner may plead to or traverse all or any of the material averments set forth in said answer, and the defendant shall take issue or demur to said plea or traverse within five days thereafter *unless for cause shown, the court shall extend the time*; and such further proceedings shall thereupon be had in the premises for the determination thereof as if the petitioner had brought an action for a false return.

Act of June 30, 1902 (32 Stat. L. pt. 1, 543).

U. S. ex rel. Cox *v.* Hitchcock, 19 App. D. C. 347, 30 W. L. R. 201.

Garfield *v.* U. S. ex rel. Turner, 31 App. D. C. 332, 36 W. L. R. 410.

SEC. 1277. TIME OF TRIAL OF ISSUE.—If issue shall be joined on such proceedings, the same shall stand for trial at as early a day as the court shall appoint.

SEC. 1278. TRIAL.—Such issues shall be tried by a jury if both parties in writing require it, otherwise they shall be heard and determined by the court; and in case a verdict shall be found for the petitioner, or if the court upon hearing determine for the petitioner, or judgment be given for him upon demurrer or for want of a plea, such petitioner shall thereupon recover his damages and costs as he

SEC. 1279. JUDGMENT FOR DEFENDANT.—If judgment shall be given for the defendant he shall recover his costs of suit, to be levied in the manner aforesaid.

SEC. 1280. DEFENDANT'S DEFAULT.—If the defendant shall neglect to file his answer to the petition by the day named in the order of the court, after being served with notice thereof, the said court shall thereupon proceed to hear the said petition ex parte, within five days thereafter, and if it shall be of opinion that the facts and law of the case authorize the granting of a mandamus as prayed, it shall there-

upon without delay order a peremptory mandamus to issue, and shall also adjudge to the petitioner his costs of suit.

SEC. 1281. If the court shall, upon such *ex parte* hearing, be of opinion that the facts and law of the case do not authorize the granting of a mandamus, it shall dismiss such petition with costs.

SEC. 1282. APPEAL.—In case of an appeal by the defendant the court shall fix the penalty of the appeal bond necessary to be given to stay the execution or enforcement of the order appealed from.

Garfield *v.* U. S. *ex rel.* Stevens, 32 App. D. C. 109, 36 W. L. R. 757.

CHAPTER FORTY-THREE

MARRIAGE

SEC. 1283. PROHIBITIONS.—The following marriages are prohibited in the District of Columbia and shall be absolutely void ab initio, without being so decreed, and their nullity may be shown in any collateral proceedings, namely:

First. The marriage of a man with his grandmother, grandfather's wife, wife's grandmother, father's sister, mother's sister, mother, stepmother, wife's mother, daughter, wife's daughter, son's wife, sister, son's daughter, daughter's daughter, son's son's wife, daughter's son's wife, wife's son's daughter, wife's daughter's daughter, brother's daughter, sister's daughter.

Second. The marriage of a woman with her grandfather, grandmother's husband, husband's grandfather, father's brother, mother's brother, father, stepfather, husband's father, son, husband's son, daughter's husband, brother, son's son, daughter's son, son's daughter's husband, daughter's daughter's husband, husband's son's son, husband's daughter's son, brother's son, sister's son.

Third. The marriage of any persons either of whom has been previously married and whose previous marriage has not been terminated by death or a decree of divorce.

See sec. 875.

Act of Md. of 1777, ch. 12, sec. 1; Comp. Stat. D. C., p. 271, sec. 2.

For reference to common-law marriage, see *Evans v. Neumann*, 51 App. D. C. 300 (1922); 50 W. L. R. 227.

SEC. 1284. MARRIAGE MAY BE DECREED TO BE VOID.—Any of such marriages may also be declared to have been null and void by judicial decree.

See secs. 965, 972-975.

SEC. 1285. WHEN VOID FROM DATE OF DECREE.—The following marriages in said District shall be illegal, and shall be void from the time when their nullity shall be declared by decree, namely:

First. The marriage of an idiot or of a person adjudged to be a lunatic.

Second. Any marriage the consent to which of either party has been procured by force or fraud.

Third. Any marriage either of the parties to which shall be incapable, from physical causes, of entering into the married state.

Fourth. When either of the parties is under the age of consent, which is hereby declared to be sixteen years of age for males and fourteen for females.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 543).

Concealment of pregnancy as fraud, *Lenoir v. Lenoir*, 24 App. D. C. 160 (1904); 32 W. L. R. 456.

Suit for annulment of marriage because of lunacy may be filed by a next friend, notwithstanding the fact that a committee has been appointed. *Mackey v. Peters*, 22 App. D. C. 341 (1903) ; 31 W. L. R. 504.

"Full force and effect will be given to section 1285, if the adjudication of lunacy referred to therein is construed to mean adjudication of lunacy in the suit instituted for the annulment of the marriage, although such adjudication per se might not authorize the appointment of a committee, as under section 115b of the code, which requires a direct proceeding for the purpose." *Mackey v. Peters*, supra, distinguishing *Groff v. Miller*, 20 App. D. C. 353.

SEC. 1286. BY WHOM SUIT BROUGHT.—A proceeding to declare the nullity of a marriage may be instituted in the case of an infant under the age of consent by such infant, through a next friend, or by the parent or guardian of such infant; and in the case of an idiot or lunatic by next friend. But no such proceedings shall be allowed to be instituted by any person who, being fully capable of contracting a marriage, has knowingly and willfully *contracted* any marriage declared illegal by the foregoing sections.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 543).

Mackey v. Peters, see sec. 1285.

SEC. 1287. MARRIAGE OUT OF DISTRICT.—If any marriage declared illegal by the foregoing sections shall be entered into in another jurisdiction by persons having and retaining their domicile in the District of Columbia, such marriage shall be deemed illegal, and may be decreed to be void in said District in the same manner as if it had been celebrated therein.

SEC. 1288. BY WHOM MARRIAGE CEREMONY PERFORMED.—For the purpose of preserving the evidence of marriages in the District, every minister of the gospel appointed or ordained according to the rites and ceremonies of his church, whether his residence be in the District or elsewhere in the United States or the Territories, may be authorized by any justice of the supreme court of the District of Columbia to celebrate marriages in the District. And marriages may be celebrated in the District by any justice of the peace or by any judge or justice of any court of record: *Provided, however, That marriages of members of any church or religious society which does not by its custom require the intervention of a minister for the celebration of marriages may be solemnized in the manner prescribed and practiced in any such society, the license in such case to be issued to, and returns to be made by, a person appointed by such church or religious society for that purpose.*

Act of April 23, 1904 (33 Stat. L. pt. 1, p. 297).

SEC. 1289. UNAUTHORIZED MARRIAGE.—If any one except a minister or other person authorized by the foregoing section shall hereafter celebrate the rites of marriage in said District, he shall be subject to the penalty prescribed in the following section.

SEC. 1290. LICENSE.—No person authorized hereby to celebrate the rites of marriage shall do so in any case without first having delivered to him a license therefor *addressed to him* issued from the clerk's office of said supreme court, under a penalty of not more than five hundred dollars, in the discretion of the court, to be recovered upon information in the police court of the District.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 543).

SEC. 1291. DUTY OF CLERK.—It shall be the duty of the clerk of the supreme court before issuing any license to solemnize a marriage

to examine any applicant for said license under oath and to ascertain the names, ages, and color of the parties desiring to marry, and if they are under age the names of their parents or guardians, whether they were previously married, whether they are related or not, and if so, in what degree, which facts shall appear on the face of the application, of which the clerk shall provide a printed form, and any false swearing in regard to such matters shall be deemed perjury.

SEC. 1292. CONSENT OF PARENT OR GUARDIAN.—If any male person intending to marry and seeking a license therefor shall be under twenty-one years of age, or any female so intending shall be under eighteen years of age, and shall not have been previously married, the said clerk shall not issue such license unless the father of such person, or, if there be no father, the mother, or, if there be neither father nor mother, the guardian, if there be such, shall consent to such proposed marriage, either personally to the clerk, or by an instrument in writing attested by a witness and proved to the satisfaction of the clerk.

SEC. 1293. FORM OF LICENSE.—Licenses to perform the marriage ceremony shall be addressed to some particular minister, magistrate, or other person authorized by section twelve hundred and eighty-eight hereof to perform or witness the marriage ceremony and shall be in the following form:

Number -----

To -----, authorized to celebrate (or witness) marriages in the District of Columbia, greeting:

You are hereby authorized to celebrate (or witness) the rites of marriage between -----, of -----, and -----, of -----, and having done so, you are commanded to make return of the same to the clerk's office of the supreme court of said District within ten days under a penalty of fifty dollars for default therein.

Witness my hand and seal of said court this ----- day of -----, anno Domini -----

----- Clerk.
By ----- Assistant Clerk.

Said return shall be made in person or by mail on a coupon issued with said license and bearing a corresponding number therewith within ten days from the time of said marriage, and shall be in the following form:

Number -----

I, -----, who have been duly authorized to celebrate (or witness) the rites of marriage in the District of Columbia, do hereby certify that, by authority of a license of corresponding number herewith, I solemnized (or witnessed) the marriage of ----- and -----, named therein, on the ----- day of -----, at -----, in said District.

A second coupon, of corresponding number with the license, shall be attached to and issued with said license, to be given to the contracting parties by the minister or other person to whom such license was addressed, and shall be in the following form:

Number -----

I hereby certify that on this ----- day of -----, at ----- and ----- were by (or before) me united in marriage in accordance with the license issued by the clerk of the supreme court of the District of Columbia.

Name -----
Residence -----

Act of April 23, 1904 (33 Stat. L. pt. 1, p. 297), repealing 31 Stat. L. pt. 1, p. 1189, as amended by 32 Stat. L. pt. 1, p. 543.

SEC. 1294. DUTY OF MINISTER OR OTHER PERSON CELEBRATING MARRIAGE.—Any minister or other person, having solemnized *or witnessed* the rites of marriage under the authority of a license issued as aforesaid, who shall fail to make return as therein required, shall be liable to a penalty of fifty dollars upon conviction of said failure upon information in the police court of said district.

Act of April 23, 1904 (33 Stat. L., pt. 1, p. 298).

SEC. 1295. RECORD.—The clerk of the said court shall provide a record book in his office, consisting of applications and licenses in blank, to be filled up by him with the names and residences of the parties for whose marriage any license may have been issued, said applications and licenses to be numbered consecutively from one upward; and also a record book in which shall be recorded, in the order of their numbers, the certificates of the minister or other persons authorized, upon their return to said office, corresponding to said record book of licenses issued, and a copy of any license and certificate of marriage so kept and recorded, certified by the clerk under his hand and seal, shall be competent evidence of the marriage.

SEC. 1296. SLAVE MARRIAGES.—All colored persons in the District who, previous to their actual emancipation, had undertaken and agreed to occupy the relation to each other of husband and wife, and were cohabiting together as such or in any way recognizing the relation as existing on the twenty-fifth day of July, eighteen hundred and sixty-six, whether the rites of marriage have been celebrated between them or not, are deemed husband and wife, and are entitled to all the rights and privileges and subject to the duties and obligations of that relation in like manner as if they had been duly married according to law. All the children of such persons shall be deemed legitimate, whether born before or after the date mentioned. When such parties have ceased to cohabit before such date, in consequence of the death of the woman or from any other cause, all the children of the woman recognized by the man to be his shall be deemed legitimate.

R. S. D. C., secs. 724–726, Comp. Stat. D. C., p. 274, secs. 20–22.

Howard v. Evans, 24 App. D. C. 127 (1904); 32 W. L. R. 407, following Jennings v. Webb, 8 App. D. C. 43 (1896); 24 W. L. R. 84.

Security Investment Co. v. Garrett, 3 App. D. C. 69 (1894); 22 W. L. R. 268.

SEC. 1297. COLORED PERSONS.—The issue of any marriage of colored persons contracted and entered into according to any custom prevailing at the time in any of the States wherein the same occurred shall, for all purposes of descent and inheritance and the transmission of both real and personal property within the District of Columbia, be deemed and held to be legitimate and capable of inheriting and transmitting inheritance, and taking as next of kin and distributes (sic) according to law, from and to their parents or either of them, and from and to those from whom such parents or either of them may inherit or transmit inheritance, anything in the laws of such State to the contrary notwithstanding: *Provided*, That nothing herein shall be construed as implying that any such marriage is not valid or such issue legitimate for all other purposes.

Act of Feb. 6, 1879 (20 Stat. L. p. 282).

See annotations to section 1296.

CHAPTER FORTY-FOUR

NAME, CHANGE OF

SEC. 1298. PROCEEDING FOR CHANGE OF NAME.—Any person, being a resident of the District, desiring a change of name may file a petition in the supreme court holding an equity term setting forth the reasons therefor and also the name desired to be assumed. In case the applicant is an infant, such petition shall be filed by the parent, guardian, or next friend to said infant. The court shall have power, in its discretion, to grant the prayer of such petition.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 543), repealing 31 Stat. L. pt. 1, p. 1189.

American Elementary Electric Co. v. Normandy, 46 App. D. C. 329 (1917); 45 W. L. R. 276, holding that secs. 1298-1300 do not apply to corporations.

SEC. 1299. NOTICE.—Notice of the filing of such petition, containing the substance and prayer thereof, shall be published *once a week* for three consecutive weeks in some newspaper in general circulation published in the District prior to the hearing of the petition.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 543).

See annotation to section 1298.

SEC. 1300. DECREE.—The court, or the justice holding an equity term thereof, on proof of such notice and upon such showing as may be deemed satisfactory, may change the name of the applicant according to the prayer of the petition.

R. S. D. C., secs. 833-835, Comp. Stat D. C., p. 444, secs. 20-22.

See annotation to section 1298.

CHAPTER FORTY-FIVE

NEGLIGENCE CAUSING DEATH

SEC. 1301. LIABILITY.—Whenever by an injury done or happening within the limits of the District of Columbia the death of a person shall be caused by the wrongful act, neglect, or default of any person or corporation, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured, or if the person injured be a married woman, have entitled her husband, either separately or by joining with the wife, to maintain an action and recover damages, the person who or corporation which would have been liable if death had not ensued shall be liable to an action for damages for such death, notwithstanding the death of the person injured, even though the death shall have been caused under circumstances which constitute a felony; and such damages shall be assessed with reference to the injury resulting from such act, neglect, or default causing such death, to the widow and next of kin of such deceased person: *Provided*, That in no case shall the recovery under this act exceed the sum of ten thousand dollars: *And provided further*, That no action shall be maintained under this chapter in any case when the party injured by such wrongful act, neglect, or default has recovered damages therefor during the life of such party.

See section 235, Appendix, p. 615, as to liability of common carriers.

Act of Feb. 17, 1885 (23 Stat. L. p. 307), Comp. Stat. D. C. p. 397, secs. 1 et seq.

As to appointment of administrator for the purpose of filing suit see *Southern Railway Co. v. Hawkins*, 35 App. D. C. 313 (1910); 38 W. L. R. 425, citing *Washington Asphalt Block & Tile Co. v. Mackey*, 15 App. D. C. 410 (1900); 28 W. L. R. 35. See also *Western Union Telegraph Co. v. Lipscomb*, 22 App. D. C. 104 (1903); 31 W. L. R. 422. *Fleming v. Capital Traction Co.*, 40 App. D. C. 489 (1913); 41 W. L. R. 388.

"Section 1301, in effect, provides that the measure of damages shall be the injury resulting to the widow and next of kin. While section 1302 requires the action to be brought in the name of the personal representative, section 1303 in terms sets aside the damages recovered for the benefit of the family of the decedent. It will thus be seen that the duty of the administrator is simply to bring the suit allowed by the statute, and, in the event of a recovery, distribute the damages according to the provisions of the statute of distributions in force in this District." *Southern R. Co. v. Hawkins*, supra. Action is maintainable for benefit of illegitimate brother of the half blood of the decedent, a woman. *Ib.*

Statute is remedial and as such must be liberally construed. *Calvert v. Terminal Taxicab Co.*, 48 App. D. C. 119 (1918); 46 W. L. R. 342, citing *U. S. ex rel. Stevens v. Richards*, 33 App. D. C. 410.

As to right of administrator to maintain action for benefit of surviving husband, see *Calvert v. Terminal Taxicab Co.*, supra.

Necessity for declaration to allege existence of beneficiaries within the statute, and right to amend a declaration failing to so allege, see *Neubeck v. Lynch*, 37 App. D. C. 576 (1911); 40 W. L. R. 18.

This section is not repealed by the employers' liability act (34 Stat. L. 232); but each act applies to cases arising under it and to none other. *Hyde v. Southern R. Co.*, 31 App. D. C. 466 (1908); 36 W. L. R. 374.

Action may be maintained in this District against a druggist whose negligent filling of a prescription in the District results in death beyond the District. *Moore v. Pywell*, 29 App. D. C. 312 (1907); 35 W. L. R. 225. See *Stewart v. B. & O. R. R. Co.*, 168 U. S. 445 (1897), reversing 6 App. D. C. 56 (action for negligently causing death in Maryland).

As to measure of damages to be recovered on behalf of a father for the death of his minor child, see *United States Electric Lighting Co. v. Sullivan*, 22 App. D. C. 115 (1903); 31 W. L. R. 406. See also *Smith v. Cissel*, 22 App. D. C. 318 (1903); 31 W. L. R. 475. *Balto. & Pot. R. R. Co. v. Golway*, 6 App. D. C. 143 (1895); 23 W. L. R. 308.

Under act of Feb. 17, 1885, see *D. C. v. Wilcox*, 4 App. D. C. 90 (1894); 22 W. L. R. 623.

SEC. 1302. BY WHOM SUIT TO BE BROUGHT.—Every *such* action shall be brought by and in the name of the personal representative of such deceased person, and within one year after the death of the party injured.

See annotations to section 1301.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 543).

"Section 1302 requires that suit shall be brought 'by and in the name of the personal representative of such deceased person.' This has been held to mean either the executor or administrator of the deceased. *Ferguson v. Wash'n & R. G. Co.*, 6 App. D. C. 525." *Southern R. Co. v. Hawkins*, 35 App. D. C. 313, (1910); 38 W. L. R. 425.

Under act of February 17, 1885 (23 Stat. L. p. 307) see *McGraw v. D. C.*, 3 App. D. C. 405 (1894); 22 W. L. R. 383.

SEC. 1303. DISTRIBUTION OF DAMAGES.—The damages recovered in such action shall not be appropriated to the payment of the debts or liabilities of such deceased person, but shall inure to the benefit of his or her family and be distributed according to the provisions of the statute of distribution in force in the said District of Columbia.

See annotations to section 1301.

Fleming v. Capital Traction Co., 40 App. D. C. 489 (1913); 41 W. L. R. 388 (recovery not liable for debts of deceased, but, nevertheless, it is the duty of administrator to institute suit, if facts warrant it).

Miller-Shoemaker Real Estate Co. v. Sturgeon, 31 App. D. C. 406 (1908); 36 W. L. R. 350.

CHAPTER FORTY-SIX

NEGOTIABLE INSTRUMENTS

SEC. 1304. DEFINITIONS.—In this chapter, unless the context otherwise requires—

“Acceptance” means an acceptance completed by delivery or notification.

“Action” includes counterclaim and set-off.

“Bank” includes any person or association of persons carrying on the business of banking, whether incorporated or not.

“Bearer” means the person in possession of a bill or note which is payable to bearer.

“Bill” means bill of exchange, and “note” means negotiable promissory note.

“Delivery” means transfer of possession, actual or constructive, from one person to another.

“Holder” means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

“Indorsement” means an indorsement completed by delivery.

“Instrument” means negotiable instrument.

“Issue” means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

“Person” includes a body of persons, whether incorporated or not.

“Value” means valuable consideration.

“Written” includes printed, and “writing” includes print.

The person “primarily” liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are “secondarily” liable.

In determining what is a “reasonable time” or an “unreasonable time” regard is to be had to the nature of the instrument, the usage of trade or business, if any, with respect to such instruments, and the facts of the particular case.

Where the day or the last day for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

In any case not provided for in this *chapter* the rules of the law merchant shall govern.

The provisions of this chapter do not apply to negotiable instruments made and delivered prior to January twelfth, eighteen hundred and ninety-nine.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 543).

See act of January 12, 1899 (30 Stat. L., p. 785).

SEC. 1305. WHEN NEGOTIABLE.—An instrument to be negotiable must conform to the following requirements:

First. It must be in writing and signed by the maker or drawer.

Second. It must contain an unconditional promise or order to pay a certain sum in money.

Third. It must be payable on demand or at a fixed or determinable future time.

Fourth. It must be payable to order or to bearer; and,

Fifth. Where the instrument is addressed to a drawee he must be named or otherwise indicated therein with reasonable certainty.

As to status of postal money orders, see *Jaselli v. Riggs National Bank*, 36 App. D. C. 159 (1911); 39 W. L. R. 21.

Commercial National Bank v. Consumers' Brewing Co., 17 App. D. C. 100 (1900); 28 W. L. R. 751; see also *Same v. Same*, 16 App. D. C. 186 (1900); 28 W. L. R. 320.

Bowie v. Hume, 13 App. D. C. 286 (1898); 26 W. L. R. 690.

SEC. 1306. SUM PAYABLE.—The sum payable is a sum certain within the meaning hereof, although it is to be paid—

First. With interest; or,

Second. By stated installments; or,

Third. By stated installments, with a provision that upon default in payment of any installment or of interest the whole shall become due; or,

Fourth. With exchange, whether at a fixed rate or at the current rate; or,

Fifth. With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

SEC. 1307. WHEN PROMISE IS UNCONDITIONAL.—An unqualified order or promise to pay is unconditional within the meaning hereof, though coupled with—

First. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or,

Second. A statement of the transaction which gives rise to the instrument.

But an order or promise to pay out of a particular fund is not unconditional.

SEC. 1308. TIME OF PAYMENT.—An instrument is payable at a determinable future time, within the meaning hereof, which is expressed to be payable—

First. At a fixed period after date or sight; or,

Second. On or before a fixed or determinable future time specified therein; or,

Third. On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

Commercial National Bank v. Consumers' Brewing Co., 16 App. D. C. 186 (1900); 28 W. L. R. 320.

Bowie v. Hume, 13 App. D. C. 286 (1898); 26 W. L. R. 690.

SEC. 1309. PROMISE IN ADDITION TO PROMISE OF PAYMENT.—An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which—

First. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or,

Second. Authorizes a confession of judgment if the instrument be not paid at maturity; or,

Third. Waives the benefit of any law intended for the advantage or protection of the obligor; or,

Fourth. Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal.

See annotations to sections 1305, 1308.

SEC. 1310. DATE.—The validity and negotiable character of an instrument are not affected by the fact that—

First. It is not dated; or,

Second. Does not specify the value given, or that any value has been given therefor; or,

Third. Does not specify the place where it is drawn or the place where it is payable; or,

Fourth. Bears a seal; or,

Fifth. Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

SEC. 1311. INSTRUMENT PAYABLE ON DEMAND.—An instrument is payable on demand—

First. Where it is expressed to be payable on demand, or at sight, or on presentation; or,

Second. In which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand.

SEC. 1312. INSTRUMENT PAYABLE TO ORDER.—The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of—

First. A payee who is not maker, drawer, or drawee; or,

Second. The drawer or maker; or,

Third. The drawee; or,

Fourth. Two or more payees jointly; or,

Fifth. One or some of several payees; or,

Sixth. The holder of an office for the time being.

Where the instrument is payable to order, the payee must be named or otherwise indicated therein with reasonable certainty.

SEC. 1313. INSTRUMENT PAYABLE TO BEARER.—The instrument is payable to bearer—

First. When it is expressed to be so payable; or,

Second. When it is payable to a person named therein or bearer; or,

Third. When it is payable to the order of a fictitious or nonexistent person and such fact was known to the person making it so payable; or,

Fourth. When the name of the payee does not purport to be the name of any person; or,

Fifth. When the only or last indorsement is an indorsement in blank.

SEC. 1314. WHAT SUFFICIENT LANGUAGE.—The instrument need not follow the language herein employed, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof.

SEC. 1315. PRESUMPTION AS TO DATE.—Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance, or indorsement, as the case may be.

SEC. 1316. ANTEDATING AND POSTDATING.—The instrument is not invalid for the reason only that it is antedated or postdated: *Provided*, That this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

SEC. 1317. WANT OF DATE.—Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him the date so inserted is to be regarded as the true date.

SEC. 1318. BLANKS.—Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature, in order that the paper may be converted into a negotiable instrument, operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument, when completed, may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time; but if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

Richards v. Street, 31 App. D. C. 427 (1908); 36 W. L. R. 428.

SEC. 1319. COMPLETING WITHOUT AUTHORITY.—Where an incomplete instrument has not been delivered it will not, if completed and negotiated without authority, be a valid contract in the hands of any holder as against any person whose signature was placed thereon before delivery.

SEC. 1320. DELIVERY.—Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting, or indorsing as the case may be; and in such case the delivery may be shown to have

been conditional or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him; so as to make them liable to him, is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

Prosisie v. Phillips, 41 App. D. C. 226 (1913) ; 41 W. L. R. 802.

SEC. 1321. CONSTRUCTION.—Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply:

First. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount.

Second. Where the instrument provides for the payment of interest without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof.

Third. Where the instrument is not dated it will be considered to be dated as of the time it was issued.

Fourth. Where there is conflict between the written and printed provisions of the instrument, the written provisions prevail.

Fifth. Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election.

Sixth. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser.

Seventh. Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

SEC. 1322. WHO NOT LIABLE ON.—No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

SEC. 1323. SIGNATURE BY AGENT.—The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose, and the authority of the agent may be established as in other cases of agency.

See section 1325.

SEC. 1324. AGENT, WHEN NOT LIABLE ON.—Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized, but the mere addition of words describing him as an agent or as filling a representative character without disclosing his principal does not exempt him from personal liability.

Eisinger v. E. J. Murphy Co., 52 App. D. C. 197 (1922) ; 51 W. L. R. 37.

Eisinger v. E. J. Murphy Co., 48 App. D. C. 476 (1919) ; 47 W. L. R. 281.

SEC. 1325. SIGNATURE BY PROCURATION.—A signature by “procuration” operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

Crane v. Postal Telegraph Cable Co., 48 App. D. C. 54 (1918) ; 46 W. L. R. 306 .

SEC. 1326. INDORSEMENT BY CORPORATION OR INFANT.—The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

Willard v. Crook, 21 App. D. C. 237 (1903) ; 31 W. L. R. 177.

As to effect of corporation indorsing and attaching its corporate seal, see *Clark v. Read*, 12 App. D. C. 343 (1898) ; 26 W. L. R. 183. Omission of word “by” between title of corporation, and officer acting for it in the indorsement, is immaterial. *Ib.*

SEC. 1327. FORGED SIGNATURE.—Where a signature is forged or made without the authority of the person whose signature it purports to be it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority.

Central National Bank v. National Metropolitan Bank, 31 App. D. C. 391 (1908) ; 36 W. L. R. 342 (liability of bank for payment of check on forged indorsement).

Richards v. Street, 31 App. D. C. 427 (1908) ; 36 W. L. R. 428.

Bowie v. Hume, 13 App. D. C. 286 (1898) ; 26 W. L. R. 690.

SEC. 1328. PRESUMPTION OF VALUABLE CONSIDERATION.—Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value.

“This amounts to a mere legal presumption which disappears when confronted by facts setting up either absence or failure of consideration.” *Holley v. Smalley*, 50 App. D. C. 178 (1921) ; 49 W. L. R. 50.

Towles v. Tanner, 21 App. D. C. 530 (1903) ; 31 W. L. R. 254.

SEC. 1329. WHAT IS VALUE.—Value is any consideration sufficient to support a simple contract. An antecedent or preexisting debt constitutes value, and is deemed such whether the instrument is payable on demand or at a future time.

“One who holds a negotiable note taken before maturity as collateral security for a preexisting debt, is a holder for value.” *Thompson v. Franklin National Bank*, 45 App. D. C. 218 (1916) ; 44 W. L. R. 325, certiorari denied, 242 U. S. 637.

Richards v. Street, 31 App. D. C. 427 (1908) ; 36 W. L. R. 428.

Metzerott v. Ward, 10 App. D. C. 514 (1897) ; 25 W. L. R. 296.

SEC. 1330. WHO IS HOLDER FOR VALUE.—Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

See sections 1356-1363.

Richards v. Street, 31 App. D. C. 427 (1908) ; 36 W. L. R. 428.

Bryan v. Harr, 21 App. D. C. 190 (1903) ; 31 W. L. R. 142.

Wirt v. Stubblefield, 17 App. D. C. 283 (1900) ; 29 W. L. R. 44 (gaming consideration).

SEC. 1331. Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

SEC. 1332. ABSENCE OR FAILURE OF CONSIDERATION.—Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise.

See sections 1356-1363.

Ryan *v.* Security Savings & Commercial Bank, 50 App. D. C. 292 (1921); 49 W. L. R. 229.

Brown *v.* Ohio National Bank, 18 App. D. C. 598 (1901); 29 W. L. R. 819.

Randle *v.* Davis Coal & Coke Co., 15 App. D. C. 357 (1898); 27 W. L. R. 773.

Fields *v.* Central National Bank, 10 App. D. C. 1 (1897); 25 W. L. R. 82.

Durant *v.* Murdock, 3 App. D. C. 114 (1894); 22 W. L. R. 349.

SEC. 1333. ACCOMMODATION PARTIES.—An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

Staples *v.* Port Graham Coal Co., 46 App. D. C. 542 (1917); 45 W. L. R. 371, certiorari denied 245 U. S. 671.

Thompson *v.* Franklin National Bank, 45 App. D. C. 218 (1916); 44 W. L. R. 325, certiorari denied 242 U. S. 637.

Howell *v.* Comm. National Bank, 40 App. D. C. 370 (1913); 41 W. L. R. 337.

LaNormandie Hotel Co. *v.* Security Trust Co., 38 App. D. C. 187 (1912); 40 W. L. R. 105.

Bluthenthal & Bickart *v.* Carson, 37 App. D. C. 118 (1911); 39 W. L. R. 341.

Willard *v.* Crook, 21 App. D. C. 237 (1903); 31 W. L. R. 177.

SEC. 1334. NEGOTIATION.—An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder, completed by delivery.

McKee *v.* District National Bank, 38 App. D. C. 465 (1912); 40 W. L. R. 244.

SEC. 1335. INDORSEMENT.—The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

SEC. 1336. The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument; but where the instrument has been paid in part it may be indorsed as to the residue.

SEC. 1337. An indorsement may be either special or in blank; and it may also be either restrictive or qualified or conditional.

SEC. 1338. SPECIAL INDORSEMENT.—A special indorsement specifies the person to whom or to whose order the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank

specifies no indorsee, and an instrument so indorsed is payable to bearer and may be negotiated by delivery.

Howell v. Commercial National Bank, 40 App. D. C. 370 (1913); 41 W. L. R. 337.

Jerman v. Edwards, 29 App. D. C. 535 (1907); 35 W. L. R. 466.

SEC. 1339. The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

SEC. 1340. RESTRICTIVE INDORSEMENT.—An indorsement is restrictive which either—

First. Prohibits the further negotiation of the instrument; or,

Second. Constitutes the indorsee the agent of the indorser; or,

Third. Vests the title in the indorsee in trust for or to the use of some other person. But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

SEC. 1341. A restrictive indorsement confers upon the indorsee the right—

First. To receive payment of the instrument.

Second. To bring any action thereon that the indorser could bring.

Third. To transfer his rights as such indorsee where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

See section 1338.

McKee v. District National Bank, 38 App. D. C. 465 (1912); 40 W. L. R. 244.

Jerman v. Edwards, 29 App. D. C. 535 (1907); 35 W. L. R. 466.

SEC. 1342. QUALIFIED INDORSEMENT.—A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse," or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

SEC. 1343. CONDITIONAL INDORSEMENT.—Where an indorsement is conditional, a party required to pay the instrument may disregard the condition and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

SEC. 1344. SPECIAL INDORSEMENT, WHEN PAYABLE TO BEARER.—Where an instrument payable to bearer is indorsed specially it may, nevertheless, be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

SEC. 1345. JOINT PAYEES NOT PARTNERS.—Where an instrument is payable to the order of two or more payees or indorsees who are not partners all must indorse, unless the one indorsing has authority to indorse for the others.

SEC. 1346. PAYABLE TO CASHIER.—Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed *prima facie* to be payable to the bank or corporation of which he is such officer, and may be negotiated by

either the indorsement of the bank or corporation or the indorsement of the officer.

SEC. 1347. PAYEE'S NAME MISSPELLED.—Where the name of a payee or indorsee is wrongly designated or misspelled he may indorse the instrument as therein described, adding, if he think fit, his proper signature.

SEC. 1348. INDORSEMENT BY REPRESENTATIVE.—Where any person is under obligation to indorse in a representative capacity he may indorse in such terms as to negative personal liability.

SEC. 1349. PRESUMPTION OF NEGOTIATION BEFORE MATURITY.—Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue.

See section 1271.

Catholic University v. Waggaman, 32 App. D. C. 307 (1909) ; 37 W. L. R. 42.

SEC. 1350. PRESUMPTION AS TO PLACE OF MAKING.—Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated.

SEC. 1351. NEGOTIABLE INSTRUMENT CONTINUES SUCH.—An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

Lincoln v. Grant, 47 App. D. C. 475 (1918) ; 46 App. D. C. 246.

SEC. 1352. STRIKING OUT INDORSEMENTS.—The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out and all indorsers subsequent to him are thereby relieved from liability on the instrument.

Howell v. Commercial National Bank, 40 App. D. C. 370 (1913) ; 41 W. L. R. 337.

Jerman v. Edwards, 29 App. D. C. 535 (1907) ; 35 W. L. R. 466.

SEC. 1353. TRANSFER WITHOUT INDORSING.—Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

SEC. 1354. TRANSFER BACK TO PRIOR PARTY.—Where an instrument is negotiated back to a prior party such party may, subject to the provisions of this act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

SEC. 1355. RIGHTS OF HOLDER.—The holder of a negotiable instrument may sue thereon in his own name, and payment to him in due course discharges the instrument.

SEC. 1356. WHO IS HOLDER IN DUE COURSE.—A holder in due course is a holder who has taken the instrument under the following conditions:

First. That it is complete and regular upon its face.

Second. That he became the holder of it before it was over due, and without notice that it had been previously dishonored, if such was the fact.

Third. That he took it in good faith and for value.

Fourth. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

Wilkinson v. Van Senden, 45 App. D. C. 191 (1916); 44 W. L. R. 378, citing *Codington v. Standard Bank*, 40 App. D. C. 409; *Hazen v. Van Senden*, 43 App. D. C. 161; 43 W. L. R. 117.

O'Toole v. Lamson, 41 App. D. C. 276 (1914); 42 W. L. R. 34.

First National Bank v. Fox, 40 App. D. C. 430 (1913); 41 W. L. R. 382, certiorari denied 231 U. S. 751.

Howell v. Comm. National Bank, 40 App. D. C. 370 (1913); 41 W. L. R. 337.

Hutchins v. Langley, 27 App. D. C. 234 (1906); 34 W. L. R. 486.

Bryan v. Harr, 21 App. D. C. 190 (1903); 31 W. L. R. 142.

Brewer v. Slater, 18 App. D. C. 48 (1901); 29 W. L. R. 259.

Cropley v. Eyster, 9 App. D. C. 373 (1896); 24 W. L. R. 829.

SEC. 1357. Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

SEC. 1358. Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

SEC. 1359. DEFECTIVE TITLE.—The title of a person who negotiates an instrument is defective within the meaning hereof when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear or other unlawful means, or for any illegal consideration, or when he negotiates it in breach of faith or under such circumstances as amount to a fraud.

See annotations to section 1356

Wirt v. Stubblefield, 17 App. D. C. 283 (1901); 29 W. L. R. 44.

SEC. 1360. NOTICE OF INFIRMITY.—To constitute notice of an infirmity in the instrument, or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect or knowledge of such facts that his action in taking the instrument amounted to bad faith.

SEC. 1361. HOLDER IN DUE COURSE FREE FROM DEFENSES.—A holder in due course holds the instrument free from any defect of title of prior parties and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

See annotations to section 1356.

SEC. 1362. NOT HELD IN DUE COURSE, PAPER IS SAME AS NONNEGOTIABLE.—In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were nonnegotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter.

Lincoln v. Grant, 47 App. D. C. 475 (1918); 46 W. L. R. 246.

SEC. 1363. WHAT PRESUMPTION WHEN TRANSFEREE'S TITLE SHOWN DEFECTIVE.—Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has

negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last-mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

See section 1328.

O'Toole v. Lamson, 41 App. D. C. 276 (1914); 42 W. L. R. 34.

SEC. 1364. LIABILITY OF MAKER.—The maker of a negotiable instrument, by making it, engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.

SEC. 1365. LIABILITY OF DRAWER.—The drawer, by drawing the instrument, admits the existence of the payee and his then capacity to indorse, and engages that on due presentment the instrument will be accepted and paid, or both, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder.

SEC. 1366. LIABILITY OF ACCEPTOR.—The acceptor, by accepting the instrument, engages that he will pay it according to the tenor of his acceptance, and admits—

First. The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

Second. The existence of the payee and his then capacity to indorse.

SEC. 1367. IRREGULAR INDORSEMENT.—A person placing his signature upon an instrument otherwise than as a maker, drawer, or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

“The mere fact that he wrote his name on the back of the notes does not show even *prima facie* that he was a technical indorser. It is important to know when and under what circumstances he wrote his name there. If it was before or near the time the notes were delivered, or after they were delivered, but for the purpose of strengthening the credit of the note, and before the payee had indorsed, he would be a maker, and not entitled to any of the rights or privileges of an indorser.” *Ryan v. Security Savings & Commercial Bank*, 50 App. D. C. 292 (1921); 49 W. L. R. 229, citing *Chandler & Taylor Co. v. Norwood*, 14 App. D. C. 357 (1899); 27 W. L. R. 166; *Randle v. Davis Coal Co.*, 15 App. D. C. 357 (1899); 27 W. L. R. 773.

SEC. 1368. SIGNATURE IN BLANK BY STRANGER.—Where a person not otherwise a party to an instrument places thereon his signature in blank before delivery he is liable as indorser in accordance with the following rules:

First. If the instrument is payable to the order of a third person he is liable to the payee and to all subsequent parties.

Second. If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

Third. If he signs for the accommodation of the payee he is liable to all parties subsequent to the payee.

See annotation to section 1367.

Thompson v. Franklin National Bank, 45 App. D. C. 218 (1916); 44 W. L. R. 325, certiorari denied 242 U. S. 637.

SEC. 1369. NEGOTIATING BY DELIVERY OR QUALIFIED INDORSEMENT.—Every person negotiating an instrument by delivery or by a qualified indorsement warrants—

First. That the instrument is genuine and in all respects what it purports to be.

Second. That he has a good title to it.

Third. That all prior parties had capacity to contract.

Fourth. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities other than bills and notes.

Willard v. Crook, 21 App. D. C. 237 (1903); 31 W. L. R. 177.

Strauss v. Hensey, 7 App. D. C. 289 (1896); 23 W. L. R. 842.

SEC. 1370. WHAT INDORSER WARRANTS TO SUBSEQUENT HOLDERS.—Every indorser who indorses without qualification warrants to all subsequent holders in due course—

First. The matters and things mentioned in subdivisions one, two, and three of the next preceding section; and

Second. That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it.

Willard v. Crook, see section 1369.

Bryan v. Harr, 21 App. D. C. 190 (1903); 31 W. L. R. 142.

Bowie v. Hume, 13 App. D. C. 286 (1898); 26 W. L. R. 690.

SEC. 1371. INDORSING PAPER NEGOTIABLE BY DELIVERY.—Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

Thompson v. Franklin National Bank, 45 App. D. C. 218 (1916); 44 W. L. R. 325, certiorari denied 242 U. S. 637.

Strauss v. Hensey, 7 App. D. C. 289 (1895); 23 W. L. R. 842.

SEC. 1372. IN WHAT ORDER INDORSERS LIABLE.—As respects one another indorsers are liable prima facie in the order in which they indorse, but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.

SEC. 1373. NEGOTIATION BY AGENT.—Where a broker or other agent negotiates an instrument without indorsement he incurs all the liabilities prescribed by section thirteen hundred and sixty-nine of this act, unless he discloses the name of his principal and the fact that he is acting only as agent.

SEC. 1374. PRESENTMENT FOR PAYMENT, WHERE TO BE MADE.—Presentment for payment is not necessary in order to charge the person primarily liable on the instrument, but if the instrument is by its terms payable at a special place and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a

tender of payment upon his part. But, except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

Wilkins v. McGuire, 2 App. D. C. 448 (1894) ; 22 W. L. R. 155.

SEC. 1375. WHEN TO BE MADE.—Where the instrument is not payable on demand presentment must be made on the day it falls due. Where it is payable on demand presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

SEC. 1376. WHAT IS SUFFICIENT.—Presentment for payment to be sufficient must be made—

First. By the holder or by some person authorized to receive payment on his behalf.

Second. At a reasonable hour on a business day.

Third. At a proper place, as herein defined.

Fourth. To the person primarily liable on the instrument, or, if he is absent or inaccessible, to any person found at the place where the presentment is made.

SEC. 1377. Presentment for payment is made at the proper place—

First. Where a place of payment is specified in the instrument and it is there presented.

Second. Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented.

Third. Where no place of payment is specified, and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment.

Fourth. In any other case if presented to the person to make payment wherever he can be found or if presented at his last known place of business or residence.

SEC. 1378. The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

SEC. 1379. Where the instrument is payable at a bank presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

SEC. 1380. Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if, with the exercise of reasonable diligence, he can be found.

SEC. 1381. Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

SEC. 1382. Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

SEC. 1383. WHEN NOT REQUIRED TO CHARGE DRAWER OR INDORSER.—Presentment for payment is not required in order to charge the

drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

SEC. 1384. Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented.

SEC. 1385. EXCUSES FOR FAILURE.—Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.

SEC. 1386. WHEN DISPENSED WITH.—Presentment for payment is dispensed with—

First. Where, after the exercise of reasonable diligence, presentment as required hereby can not be made.

Second. Where the drawee is a fictitious person.

Third. By waiver of presentment, express or implied.

Bowie v. Hume, 13 App. D. C. 286 (1898) ; 26 W. L. R. 690.

Portsmouth Savings Bank v. Wilson, 5 App. D. C. 8 (1894) ; 22 W. L. R. 817.

SEC. 1387. WHEN INSTRUMENT IS DISHONORED.—The instrument is dishonored by nonpayment when—

First. It is duly presented for payment and payment is refused or can not be obtained; or,

Second. Presentment is excused and the instrument is overdue and unpaid.

Young v. Warner, 6 App. D. C. 433 (1895) ; 23 W. L. R. 373.

SEC. 1388. RIGHT OF ACTION ON NONPAYMENT.—Subject to the provisions hereof, when the instrument is dishonored by nonpayment an immediately right of recourse to all parties secondarily liable thereon accrues to the holder.

SEC. 1389. WHEN NEGOTIABLE INSTRUMENT IS PAYABLE.—Every negotiable instrument is payable at the time fixed therein, without grace. When the day of maturity falls upon Sunday or a holiday the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday. The following days in each year, namely, the first day of January, commonly called New Year's Day; the twenty-second day of February, known as Washington's Birthday; the Fourth of July; the thirtieth day of May, commonly called Decoration Day; the first Monday in September, known as Labor's Holiday; the twenty-fifth day of December, commonly called Christmas Day; every Saturday, after twelve o'clock noon; any day appointed or recommended by the President of the United States as a day of public fasting or thanksgiving, and the day of the inauguration of the President, in every fourth year, shall be holidays in the District *for all purposes*. Whenever any day set apart as a legal holiday shall fall on Sunday, then and in such case the next succeeding day shall be a holiday; and in such cases and in all cases in which a Sunday and a holiday shall fall on successive days all commercial paper falling due on any of said days

shall, for all purposes of presenting for payment or acceptance, be deemed to mature and be presentable for payment or acceptance on the next secular or business day succeeding.

Act of June 30, 1902 (31 Stat. L., pt. 1, p. 543).

Saturday half-holiday not excluded in computing 30 days' notice required under section 1219. *McCoy v. Duehay*, 51 App. D. C. 363 (1922); 50 W. L. R. 276, citing *Morse v. Brainerd*, 42 App. D. C. 448. See also *Swenk v. Nicholls*, 39 App. D. C. 350 (1912); 40 W. L. R. 826 (in connection with computing time for prosecution of appeals from municipal court). *Ocupaugh v. Norton*, 24 App. D. C. 296 (1904); 32 W. L. R. 846.

SEC. 1390. Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event the time of payment is determined by excluding the day from which the time is to begin to run and by including the date of payment.

SEC. 1391. Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

Dirnfeld v. Fourteenth St. Svgs. Bank, 37 App. D. C. 11 (1911); 39 W. L. R. 277.

SEC. 1392. Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

SEC. 1393. NOTICE OF DISHONOR.—Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

Bowie v. Hume, 13 App. D. C. 286 (1898); 26 W. L. R. 690.

Young v. Warner, 6 App. D. C. 433 (1895); 23 W. L. R. 373.

SEC. 1394. The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given.

SEC. 1395. Notice of dishonor may be given by an agent, either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

SEC. 1396. FOR WHOSE BENEFIT.—Where notice is given by or on behalf of the holder it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

SEC. 1397. Where notice is given by or on behalf of a party entitled to give notice it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

SEC. 1398. Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon or he may give notice to his principal. If he give notice to his principal he must do so within the same time as if he were the holder, and the principal, upon the receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder.

SEC. 1399. FORM OF NOTICE.—A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does

not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

SEC. 1400. The notice may be in writing or merely oral, and may be given in any terms which sufficiently identify the instrument and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails.

SEC. 1401. TO WHOM GIVEN.—Notice of dishonor may be given either to the party himself or to his agent in that behalf.

SEC. 1402. WHEN PARTY DEAD.—When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if, with reasonable diligence, he can be found. If there be no personal representatives, notice may be sent to the last residence or last place of business of the deceased.

SEC. 1403. PARTNERS.—Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution.

SEC. 1404. JOINT PARTIES.—Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

See section 1393.

Bowie v. Hume, 13 App. D. C. 286 (1896) ; 26 W. L. R. 690.

SEC. 1405. BANKRUPT, AND SO FORTH.—Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.

SEC. 1406. MAY BE GIVEN AS SOON AS INSTRUMENT IS DISHONORED.—Notice may be given as soon as the instrument is dishonored; and unless delay is excused, as hereinafter provided, must be given within the time fixed by this *chapter*.

32 Stat. L. pt. 1, p. 543.

SEC. 1407. WHEN TO BE GIVEN IF HOLDER AND PARTY RESIDE IN SAME PLACE.—Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

First. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the following day.

Second. If given at his residence, it must be given before the usual hours of rest on the day following.

Third. If sent by mail, it must be deposited in the post-office in time to reach him in the usual course on the day following.

SEC. 1408. WHEN IF THEY RESIDE IN DIFFERENT PLACES.—Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

First. If sent by mail, it must be deposited in the post-office in time to go by mail the day following the day of dishonor, or, if there be no mail at a convenient hour on that day, by the next mail thereafter.

Second. If given otherwise than through the post-office, then within the time that notice would have been received in due course of

mail if it had been deposited in the post-office within the time specified in the last subdivision.

SEC. 1409. MAILING NOTICE SUFFICIENT.—Where notice of dishonor is duly addressed and deposited in the post-office the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

SEC. 1410. Notice is deemed to have been deposited in the post-office when deposited in any branch post-office or in any letter box under the control of the Post-Office Department.

SEC. 1411. PARTY NOTIFIED ALLOWED WHAT TIME.—Where a party receives notice of dishonor he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

SEC. 1412. TO WHAT ADDRESS SENT.—Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

First. Either to the post-office nearest to his place of residence, or to the post-office where he is accustomed to receive his letters; or,

Second. If he live in one place and have his place of business in another, notice may be sent to either place; or,

Third. If he is sojourning in another place, notice may be sent to the place where he is sojourning.

But where the notice is actually received by the party within the time specified by this *chapter* it will be sufficient, though not sent in accordance with the requirements of this section.

Act of June 30, 1902 (32 Stat L. pt. 1, p. 543).

SEC. 1413. WAIVER OF NOTICE.—Notice of dishonor may be waived either before the time of giving notice has arrived or after the omission to give due notice, and the waiver may be express or implied.

Bowie v. Hume, 13 App. D. C. 286 (1898); 26 W. L. R. 690.

Portsmouth Savings Bank v. Wilson, 5 App. D. C. 8 (1894); 22 W. L. R. 817.

Green v. Higgins Mfg. Co., 44 App. D. C. 186 (1915); 43 W. L. R. 776.

SEC. 1414. Where the waiver is embodied in the instrument itself it is binding upon all parties, but where it is written above the signature of an indorser it binds him only.

SEC. 1415. WAIVER OF PROTEST.—A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor.

SEC. 1416. WHEN NOTICE DISPENSED WITH.—Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it can not be given to or does not reach the parties sought to be charged.

SEC. 1417. WHEN DELAY EXCUSED.—Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate notice must be given with reasonable diligence.

SEC. 1418. WHEN NOTICE NOT REQUIRED AS TO DRAWER.—Notice of dishonor is not required to be given to the drawer in either of the following cases:

First. Where the drawer and the drawee are the same person.

Second. Where the drawee is a fictitious person or a person not having capacity to contract.

Third. Where the drawer is the person to whom the instrument is presented for payment.

Fourth. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument; or,

Fifth. Where the drawer has countermanded payment.

SEC. 1419. WHEN NOT REQUIRED AS TO INDORSER.—Notice of dishonor is not required to be given to an indorser in either of the following cases:

First. Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument.

Second. Where the indorser is the person to whom the instrument is presented for payment; or,

Third. Where the instrument was made or accepted for his accommodation.

SEC. 1420. NOTICE OF NONPAYMENT, WHEN NOT NECESSARY.—Where due notice of dishonor by nonacceptance has been given, notice of a subsequent dishonor by nonpayment is not necessary, unless in the meantime the instrument has been accepted.

SEC. 1421. OMISSION TO GIVE NOTICE OF NONACCEPTANCE.—An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission.

SEC. 1422. PROTEST ON OTHER INSTRUMENTS THAN FOREIGN BILLS.—Where any negotiable instrument has been dishonored it may be protested for nonacceptance or nonpayment, as the case may be; but protest is not required except in the case of foreign bills of exchange.

The original protest of a notary public, under his hand and official seal, of any bill of exchange, check, or order for nonacceptance or nonpayment, or of any promissory note for nonpayment, stating the presentment by him of such bill of exchange, check, order, or promissory note for acceptance or payment and the nonacceptance or nonpayment thereof, and the service of notice thereof on any of the parties to such bill of exchange, promissory note, or check, and the mode of giving such notice, and the reputed place of business or residence of the party to whom the same was given shall be prima facie evidence of the facts therein contained.

Act of April 19, 1920 (41 Stat. L. pt. 1, p. 569), repealing 31 Stat. L. pt. 1, p. 1189.

See sections 567, 1395.

Referred to but not construed in *Green v. Higgins Mfg. Co.*, 44 App. D. C. 186 (1915); 43 W. L. R. 776.

Presby v. Thomas, 1 App. D. C. 171 (1893); 21 W. L. R. 659.

SEC. 1423. WHEN NEGOTIABLE INSTRUMENT DISCHARGED.—A negotiable instrument is discharged—

First. By payment in due course by or on behalf of the principal debtor.

Second. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation.

Third. By the intentional cancellation thereof by the holder.

Fourth. By any other act which will discharge a simple contract for the payment of money.

Fifth. When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

SEC. 1424. WHEN PERSON SECONDARILY LIABLE DISCHARGED.—A person secondarily liable on the instrument is discharged—

First. By an act which discharges the instrument.

Second. By the intentional cancellation of his signature by the holder.

Third. By the discharge of a prior party.

Fourth. By a valid tender of payment made by a prior party.

Fifth. By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved.

Sixth. By an agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable or unless the right of recourse against such party is expressly reserved.

See section 1367 and annotations.

Walker v. Washington Title Ins. Co., 19 App. D. C. 575 (1902); 30 W. L. R. 355.

Clark v. Read, 12 App. D. C. 343 (1898); 26 W. L. R. 183.

SEC. 1425. PAYMENT BY PARTY SECONDARILY LIABLE NOT A DISCHARGE.—Where the instrument is paid by a party secondarily liable thereon it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements and again negotiate the instrument, except—

First. Where it is payable to the order of a third person and has been paid by the drawer; and,

Second. Where it was made or accepted for accommodation and has been paid by the party accommodated.

SEC. 1426. RENOUNCING RIGHTS AGAINST PARTY.—The holder may expressly renounce his rights against any party to the instrument before, at, or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument; but a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

SEC. 1427. CANCELLATION.—A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been canceled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

SEC. 1428. ALTERATION.—Where a negotiable instrument is materially altered without the assent of all parties liable thereon it is avoided, except as against a party who has himself made, authorized, or assented to the alteration and subsequent indorsers.

But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

Towles v. Tanner, 21 App. D. C. 530 (1903) ; 31 W. L. R. 254.

Bryan v. Harr, 21 App. D. C. 190 (1903) ; 31 W. L. R. 142.

Ofenstein v. Bryan, 20 App. D. C. 1 (1902) ; 30 W. L. R. 270

SEC. 1429. WHAT IS A MATERIAL ALTERATION.—Any alteration which changes—

First. The date.

Second. The sum payable, either for principal or interest.

Third. The time or place of payment.

Fourth. The number or the relations of the parties.

Fifth. The medium or currency in which payment is to be made.

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect is a material alteration.

SEC. 1430. FORM OF BILL OF EXCHANGE.—A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.

SEC. 1431. NOT AN ASSIGNMENT OF FUNDS.—A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

SEC. 1432. TO WHOM ADDRESSED.—A bill may be addressed to two or more drawees jointly, whether they are partners or not, but not to two or more drawees in the alternative or succession.

SEC. 1433. FOREIGN AND INLAND BILLS.—An inland bill of exchange is a bill which is or on its face purports to be both drawn and payable within this District. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill the holder may treat it as an inland bill.

SEC. 1434. WHERE DRAWER AND DRAWEE SAME PERSON.—Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

SEC. 1435. REFEREE IN CASE OF NEED.—The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need; that is to say, in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may see fit.

SEC. 1436. ACCEPTANCE.—The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

SEC. 1437. The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and if such a request is refused may treat the bill as dishonored.

SEC. 1438. Where an acceptance is written on a paper other than the bill itself it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

SEC. 1439. ACCEPTANCE BEFORE BILL DRAWN.—An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

SEC. 1440. TIME ALLOWED FOR ACCEPTING.—The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance, if given, dates as of the day of presentation.

SEC. 1441. ACCEPTANCE, WHEN DEEMED MADE.—Where a drawee to whom a bill is delivered for acceptance destroys the same or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or nonaccepted to the holder he will be deemed to have accepted the same.

SEC. 1442. WHEN BILL MAY BE ACCEPTED.—A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by nonpayment. But when a bill payable after sight is dishonored by nonacceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

SEC. 1443. FORM OF ACCEPTANCE.—An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

SEC. 1444. ACCEPTANCE TO PAY AT PLACE NAMED.—An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.

SEC. 1445. QUALIFIED ACCEPTANCE.—An acceptance is qualified which is—

First. Conditional; that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated.

Second. Partial; that is to say, an acceptance to pay part only of the amount for which the bill is drawn.

Third. Local; that is to say, an acceptance to pay only at a particular place.

Fourth. Qualified as to time.

Fifth. The acceptance of some one or more of the drawees, but not of all.

SEC. 1446. HOLDER NOT BOUND TO TAKE.—The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance he may treat the bill as dishonored by nonacceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill unless they have expressly or impliedly authorized the holder to take a qualified acceptance or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must within a reasonable time express his dissent to the holder or he will be deemed to have assented thereto.

SEC. 1447. WHEN PRESENTMENT FOR ACCEPTANCE MUST BE MADE.—Presentment for acceptance must be made—

First. Where the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or,

Second. Where the bill expressly stipulates that it shall be presented for acceptance; or,

Third. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

SEC. 1448. CONSEQUENCE OF FAILURE.—Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fail to do so, the drawer and all indorsers are discharged.

SEC. 1449. WHEN PRESENTMENT TO BE MADE AND TO WHOM.—Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour on a business day, and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and,

First. Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only.

Second. Where the drawee is dead, presentment may be made to his personal representative.

Third. Where the drawee has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

SEC. 1450. MAY BE MADE ON ANY DAY ON WHICH PAYMENT MIGHT BE DEMANDED.—A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections thirteen hundred and seventy-six and thirteen hundred and eighty-nine of this *chapter*. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock noon on that day.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 543).

SEC. 1451. EXCUSES FOR DELAY.—Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawers and indorsers.

SEC. 1452. EXCUSES FOR NONPRESENTMENT.—Presentment for acceptance is excused and a bill may be treated as dishonored by nonacceptance in either of the following cases:

First. When the drawee is dead, or has absconded, or is a fictitious person, or a person not having capacity to contract by bill.

Second. Where after the exercise of reasonable diligence presentment can not be made.

Third. Where, although presentment has been irregular, acceptance has been refused on some other ground.

SEC. 1453. WHEN BILL DISHONORED BY NONACCEPTANCE.—A bill is dishonored by nonacceptance—

First. When it is duly presented for acceptance and such an acceptance as is prescribed by this *chapter* is refused or can not be obtained; or,

Second. When presentment for acceptance is excused and the bill is not accepted.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 533)...

SEC. 1454. Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorsers.

SEC. 1455. When a bill is dishonored by nonacceptance an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

SEC. 1456. PROTEST.—Where a foreign bill, appearing on its face to be such, is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill which has not previously been dishonored by nonacceptance is dishonored by nonpayment it must be duly protested for nonpayment. If it is not so protested the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

See sections 565, 1422.

SEC. 1457. FORM.—The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify—

First. The time and place of presentment.

Second. The fact that presentment was made, and the manner thereof.

Third. The cause or reason for protesting the bill.

Fourth. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

SEC. 1458. BY WHOM.—Protest can be made by—

First. A notary public; or,

Second. By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

SEC. 1459. WHEN TO BE MADE.—When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

SEC. 1460. WHERE MADE.—A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonored by nonacceptance it must be protested for nonpayment at the time when it is expressed to be payable, and no further presentment for payment to or demand on the drawee is necessary.

SEC. 1461. BILL MAY BE PROTESTED FOR BOTH NONACCEPTANCE AND NONPAYMENT.—A bill which has been protested for nonacceptance may be subsequently protested for nonpayment.

SEC. 1462. PROTEST FOR BETTER SECURITY.—Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may

cause the bill to be protested for better security against the drawer and indorsers.

SEC. 1463. WHEN DISPENSED WITH.—Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.

Lawrence v. Hammond, 4 App. D. C. 467 (1894) ; 22 W. L. R. 749.

SEC. 1464. WHEN BILL LOST, AND SO FORTH.—Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

SEC. 1465. ACCEPTANCE FOR HONOR.—Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn, and where there has been an acceptance for honor for one party there may be a further acceptance by a different person for the honor of another party.

SEC. 1466. An acceptance for honor supra protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

SEC. 1467. Where an acceptance for honor does not expressly state for whose honor it is made it is deemed to be an acceptance for the honor of the drawer.

SEC. 1468. LIABILITY OF ACCEPTOR FOR HONOR.—The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

SEC. 1469. The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided, also, that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him.

SEC. 1470. Where a bill payable after sight is accepted for honor its maturity is calculated from the date of the noting for nonacceptance and not from the date of the acceptance for honor.

SEC. 1471. Where a dishonored bill has been accepted for honor supra protest, or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need.

SEC. 1472. Presentment for payment to the acceptor for honor must be made as follows:

First. If it is to be presented in the place where the protest for nonpayment was made it must be presented not later than the day following its maturity.

Second. If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section fourteen hundred and eight.

SEC. 1473. EXCUSED, WHEN.—The provisions of section thirteen hundred and eighty-five apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

SEC. 1474. MUST BE PROTESTED FOR NONPAYMENT.—When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him.

SEC. 1475. PAYMENT FOR HONOR.—Where a bill has been protested for nonpayment any person may intervene and pay it supra protest for the honor of any person liable thereon, or for the honor of the person for whose account it was drawn.

SEC. 1476. The payment for honor supra protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honor, which may be appended to the protest or form an extension to it.

SEC. 1477. The notarial act of honor must be founded on a declaration made by the payer for honor, or by his agent in that behalf, declaring his intention to pay the bill for honor and for whose honor he pays.

SEC. 1478. Where two or more persons offer to pay a bill for the honor of different parties the person whose payment will discharge most parties to the bill will be given the preference.

SEC. 1479. Where a bill has been paid for honor all parties subsequent to the party for whose honor it is paid are discharged; but the payer for honor is subrogated for and succeeds to both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

SEC. 1480. Where the holder of a bill refuses to receive payment supra protest he loses his right of recourse against any party who would have been discharged by such payment.

SEC. 1481. The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

SEC. 1482. BILLS IN A SET.—Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill.

SEC. 1483. WHERE PARTS COME TO DIFFERENT HOLDERS.—Where two or more parts of a set are negotiated to different holders in due course the holder whose title first accrues is, as between such holders, the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

SEC. 1484. Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

SEC. 1485. HOW ACCEPTED AND LIABILITY OF ACCEPTOR.—The acceptance may be written on any part, and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

SEC. 1486. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to

him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

SEC. 1487. Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

SEC. 1488. PROMISSORY NOTES AND CHECKS.—A negotiable promissory note, within the meaning hereof, is an unconditional promise in writing, made by one person to another, signed by the maker, engaging to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order it is not complete until indorsed by him.

SEC. 1489. A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions hereof applicable to a bill of exchange payable on demand apply to a check.

SEC. 1490. WHEN CHECK MUST BE PRESENTED FOR PAYMENT.—A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

SEC. 1491. CERTIFYING CHECK.—Where a check is certified by the bank on which it is drawn the certification is equivalent to an acceptance.

SEC. 1492. DRAWER AND INDORSERS DISCHARGED.—Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon.

SEC. 1493. CHECK NOT AN ASSIGNMENT OF FUNDS.—A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check.

CHAPTER FORTY-SEVEN

PARTNERS

SEC. 1494. COMPOSITION WITH CREDITORS ON DISSOLUTION.—Where a partnership is dissolved, by mutual consent or otherwise, any partner may make a separate composition or compromise with any creditor of the partnership; and such composition or compromise shall be a full and effectual discharge to the debtor who makes the same, and to him only, of and from all and every liability to the creditor with whom the same is made, according to the terms thereof.

See section 1210.

Bunch v. U. S. use of Keppler, 40 App. D. C. 156 (1913) ; 41 W. L. R. 183.

SEC. 1495. Every such debtor who makes such composition or compromise may take from the creditor with whom he makes the same a note or memorandum, in writing, exonerating him from all and every individual liability incurred by reason of his connection with the partnership, which note or memorandum may be given in evidence by such debtor, in bar of such creditor's right of recovery against him; and if such liability be by judgment, then, on the production and filing with the clerk of the notes or memorandum, the clerk shall enter the judgment as released by the plaintiff as far as the compromising debtor is concerned.

Bunch v. U. S., use of *Keppler*, see sec. 1494.

SEC. 1496. Such compromise or composition with an individual member of a firm shall not be held to discharge the other partners, nor shall it impair the right of the creditor to proceed against such members of the partnership as have not been discharged; and the members of the partnership so proceeded against shall be permitted to set off any demand against the creditor which could have been set off had the suit been brought against all the individuals composing the firm. Nor shall the compromise or discharge of an individual member of a firm prevent the other members of the firm from availing themselves of any defense that would have been available had this chapter not been passed, except that they shall not set up the discharge of one individual as a discharge of the other partners, unless it appear that all were intended to be discharged; but the discharge of any such partner shall be deemed a payment to the creditor equal to the proportionate interest of the partner discharged in the partnership concern.

Ib.

SEC. 1497. Such compromise or composition of a member of a firm with a creditor of such firm shall in no wise affect the right of the other partners to call on the member who makes it for his ratable proportion of any partnership debt which they may be compelled to pay.

Ib.

SEC. 1498. LIMITED PARTNERSHIPS.—Limited partnerships for the transaction of any mercantile, mechanical, or manufacturing business within the District may be formed by two or more persons upon the terms, with the rights and powers, and subject to the conditions and liabilities prescribed in this chapter.

R. S. D. C., secs. 488 et seq., Comp. Stat. D. C., p. 361, secs. 1 et seq.

SEC. 1499. Such partnership may consist of one or more persons, who shall be called general partners and who shall be jointly and severally responsible as general partners are by law, and of one or more persons who shall contribute, in actual cash payments, a specific sum as capital to the common stock, who shall be called special partners.

SEC. 1500. NUMBER.—The number of special partners shall in no partnership exceed six.

SEC. 1501. LIABILITY.—The special partners shall not be liable for the debts of the partnership beyond the fund contributed by them to the capital.

SEC. 1502. CERTIFICATE TO BE SIGNED.—Persons desirous of forming a limited partnership shall make and severally sign a certificate, which shall contain—

First. The name or firm under which such partnership is to be conducted.

Second. The general nature of the business intended to be transacted.

Third. The names of all the general and special partners interested therein, distinguishing which are general and which are special partners and their respective places of residence.

Fourth. The amount of capital which each special partner shall have contributed to the common stock.

Fifth. The period at which the partnership is to commence and the period at which it is to terminate.

SEC. 1503. ACKNOWLEDGMENT AND RECORDING.—The certificate shall be acknowledged by the several persons signing the same before a judge of any court in the District, or before any notary public, and such acknowledgments shall be made and certified in the same manner as the acknowledgments of deeds of land, and when so acknowledged and certified shall be filed in the office of the clerk of the supreme court of the District, and shall be recorded by him at large in a book kept for that purpose, open to public inspection.

SEC. 1504. AFFIDAVITS.—At the time of filing the original certificate, with the evidence of the acknowledgment thereof, as directed in the preceding section, an affidavit of one or more of the general partners shall also be filed therewith in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners to the common stock have been actually and in good faith paid in cash.

SEC. 1505. No such partnership shall be deemed to have been formed until a certificate shall have been made, acknowledged, filed, and recorded, nor until an affidavit shall have been made and filed, as directed by the three preceding sections.

SEC. 1506. FALSE STATEMENTS.—If any false statement, not the result of accident or mistake, shall be made in the certificate or affidavit required by the preceding sections of this chapter, all the per-

sons interested in the partnership shall be liable for all the engagements of such partnership as general partners.

SEC. 1507. PUBLICATION.—The partners shall publish the terms of the partnership, when registered, three times a week for at least four weeks immediately after such registry in two newspapers to be designated by the clerk of the supreme court of the District, the first publication to appear within one week after the registry.

SEC. 1508. If the publication prescribed in the preceding section be not made, the partnership shall be deemed general.

SEC. 1509. The affidavits of the publication of the notice required by section fifteen hundred and seven by the editor or publishers of the newspapers in which the same shall have been published shall be filed with the clerk directing the same, and shall be prima facie evidence of the facts therein contained, the affidavit of any one editor or publisher of each newspaper being sufficient.

SEC. 1510. RENEWAL OF PARTNERSHIP.—Every renewal or continuance of a partnership beyond the time originally fixed for its duration shall be certified, acknowledged, and recorded, and an affidavit of a general partner be made and filed, and notice be given in the manner required by the provisions of this chapter for its original formation.

SEC. 1511. Every partnership which shall be renewed and continued otherwise than as provided in this chapter shall be deemed a general partnership.

SEC. 1512. WHAT SHALL BE A DISSOLUTION.—Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership.

SEC. 1513. EFFECT OF CERTAIN ACTS.—Every partnership which shall in any manner be carried on after any such alteration shall have been made shall be deemed a general partnership, unless renewed as a special partnership under the provisions of section fifteen hundred and ten.

SEC. 1514. NAME TO BE USED.—The business of the partnership may be conducted under the name of any one or more of the general partners, and with or without the addition of the word Co. or company, as the parties may determine.

SEC. 1515. WHAT NAMES TO BE USED IN SUITS.—In any action or suit brought on any contract or engagement of the partnership, or to enforce any liability of the same, the general partners whose names shall be used in the firm or business shall be the only necessary defendants; and any judgment or decree recovered against such defendants shall have the same legal effect and operation and execution thereon shall be enforced and have like effect against the partnership assets as if the judgment or decree had been recovered against the general partners.

SEC. 1516. If the name of any special partner shall be used in the firm with his privity, he shall be deemed a general partner.

SEC. 1517. WHO TO TRANSACT BUSINESS.—The general partners only shall transact the business, and if a special partner shall interfere contrary to this provision he shall be deemed a general partner, but he

may from time to time examine into the state and progress of the partnership concerns and advise as to their management.

SEC. 1518. WITHDRAWAL OF CAPITAL.—No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him or paid or transferred to him in the shape of dividends, profits, or otherwise, during the continuance of the partnership, but any partner may annually receive lawful interest on the sum so contributed by him if the payment of such interest shall not reduce the original amount of such capital; and if after payment of such interest any profits shall remain to be divided, he may also receive his portion of such profits.

SEC. 1519. REDUCTION OF CAPITAL.—If it shall appear that by the payment of interest or profits to any special partner the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of capital, with interest, on being notified thereof.

SEC. 1520. ASSIGNMENT WITH PREFERENCES.—Every sale, assignment, or transfer of any property or effects of a partnership, or of any general partner, made by such partnership or general partner when insolvent or in contemplation of insolvency, or after or in contemplation of the insolvency of any general partner, with the intent of giving preference to any creditor of such partnership or insolvent partner, and every judgment confessed, lien created, or security given by such partnership or general partner under the like circumstances and with the like intent, shall be void as against the creditors of such partnership.

SEC. 1521. Every special partner who shall violate any of the provisions of the two preceding sections, or who shall concur in or assent to any such violation by the partnership or by any individual partner, shall be liable as a general partner.

SEC. 1522. NO PARTNER TO CLAIM BEFORE CREDITORS ARE PAID.—In case of the insolvency or bankruptcy of a partnership no special partner shall, under any circumstances, be allowed to claim as a creditor until the claims of all the other creditors of the partnership shall be satisfied.

SEC. 1523. SUITS TO BE AGAINST GENERAL PARTNERS ONLY, IN WHAT CASES.—All suits respecting the business of the partnership shall be brought by and against the general partners only, subject to the provisions of section fifteen hundred and fifteen, except in those cases in which provision is made in this chapter that special partners shall be deemed general partners and special partnerships general partnerships, in which cases all persons so becoming general partners may be joined with those originally general partners in any suit brought against such partnerships.

SEC. 1524. If, in any case or suit brought against general and special partners, it shall appear at the trial of the case that the special partners or any one of them are not liable to the suit of the plaintiff, the court may proceed to judgment or decree against the partners who may appear to be liable, in the same manner as if such partners were the only parties defendant to the suit, excepting that the partners who may be deemed not liable shall recover their legal costs against the plaintiffs.

SEC. 1525. If, in any case or suit brought against general and special partners, the creditor shall recover a judgment or obtain a decree against the general partners only, and shall afterward discover that special partners, or some one or more of them, have become liable as general partners, he may bring a new suit against such special partner or partners.

SEC. 1526. In the suits mentioned in the two preceding sections the judgment recovered shall be prima facie evidence of the amount due by the partnerships, and the partnership debt shall not be merged in any judgment or decree recovered or obtained against any partner or partners as against any other partner or partners.

SEC. 1527. VOLUNTARY DISSOLUTION.—No dissolution of such partnership by act of the partners shall take place previous to the time specified in the certificate of its formation, or in the certificate of its renewal, unless in consequence of the death of one of the partners or insolvency of the partnership or of one of the general partners, nor until a notice of such dissolution shall have been filed and recorded in the office of the clerk of the supreme court of the District, and published once a week for four weeks in two newspapers to be designated by the clerk, which publication may be proved by affidavit, and recorded as hereinbefore prescribed for the publication of the certificate for the formation of such partnership.

SEC. 1528. LIABILITY OF THE GENERAL PARTNERS.—The general partners shall be liable to account to each other and to the special partners for the management of the concern, both at law and in equity.

CHAPTER FORTY-EIGHT

PAYMENT OF MONEY INTO COURT

SEC. 1529. IN WHAT CASES.—In any personal action the defendant may pay into court a sum of money on account of what is claimed by the plaintiff, or by way of compensation or amends, with cost to the time of such payment, and plead that he is not indebted to the plaintiff (or that the plaintiff has not sustained damages) to a greater amount than said sum.

See sections 1008, 1010, 1254, 1531.

SEC. 1530. RIGHT OF PLAINTIFF.—The plaintiff may accept the said sum, either in full satisfaction or in part satisfaction, and reply to the plea generally, and if issue thereon be found for the defendant judgment shall be given for the defendant and he shall recover his costs.

SEC. 1531. DEFENDANT'S RIGHT ON CLAIM BY THIRD PARTY.—Upon affidavit by the defendant, in an action upon contract or for the recovery of personal property, that a third party, without collusion with him, has or makes claim to the subject of the action, and that he, the defendant, is ready to pay or dispose of the same as the court may direct, the court may make an order for the safe-keeping or for the payment or deposit in court of the subject of the action, or the delivery thereof to such person as it may direct, and also an order requiring such third party to appear in a reasonable time and maintain or relinquish his claim against the defendant; and if said third party, having been served with a copy of the order by the marshal, fail to appear the court may declare him barred of all claim in respect to the subject of the action against the defendant therein; but if he appear he shall be allowed to make himself defendant in the action in lieu of the original defendant, who shall be discharged from all liability to either of the other parties in respect to the subject of the action on his compliance with the order of the court for the payment, deposit, or delivery thereof.

Requisites of interpleader. *Morgan v. Kraft*, 52 App. D. C. 172 (1922); 51 W. L. R. 1.

Personal service upon such third person within the jurisdiction is necessary to bring him into court. Personal service out of the jurisdiction or service by publication is insufficient. *Dexter v. Lichliter*, 24 App. D. C. 222 (1904); 32 W. L. R. 732.

CHAPTER FORTY-NINE

PLEADINGS AND PRACTICE IN RELATION THERETO

SEC. 1532. JOINDER OF CLAIMS.—The plaintiff may join in his declaration in debt, in separate counts, different claims for liquidated amounts due him, whether founded on judgment, specialty, or simple contract, and also claims for unliquidated damages for breach of contract, whether growing out of specialties or simple contract. He may also join in his declaration in trespass, in separate counts, different claims for damages for torts, whether committed with force or not. He shall *also* be allowed to join in the same declaration counts sounding in tort and counts sounding in contract *when they relate to the same transaction, but not otherwise.*

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 543).

See section 1211.

Quaere, whether, under this section, a count for libel may be joined with one of assault and battery. *Friedlander v. Rapley*, 38 App. D. C. 208 (1912); 40 W. L. R. 101.

Joining action in contract and in tort, see *Minton v. F. G. Smith Piano Co.*, 36 App. D. C. 137 (1911); 39 W. L. R. 18.

SEC. 1533. WAIVER OF DEMURRER.—In all cases, civil or criminal, in which any or either party shall demur to any indictment, declaration, or other pleading of the adverse party, and said demurrer shall be overruled, the party demurring shall have the right to plead over, by traverse or otherwise, without waiving his said demurrer; and upon appeal shall have the right to insist upon his demurrer and have the benefit thereof as fully as if he had not pleaded over.

If a demurrer has been stricken off on the ground that it is frivolous, the provision of this section relative to the right to plead over does not apply. *Miller v. Ambrose*, 35 App. D. C. 75 (1910); 38 W. L. R. 282.

Chesapeake & O. R. R. Co. v. Patton, 23 App. D. C. 113 (1904); 32 W. L. R. 85.

SEC. 1534. NON EST FACTUM.—No plea of non est factum shall be received unless it be verified by the oath of the party tendering the same, or unless the defendant, being heir, executor, or administrator of the person alleged to have made the deed, obtain leave of the court, upon just cause shown, to put in such plea without verification.

Act of Md. of 1785, ch. 80. sec. 3, Comp. Stat. D. C. p. 449, sec. 41.

Clark v. Harmer, 5 App. D. C. 114 (1895); 23 W. L. R. 120.

U. S. v. Maloney, 4 App. D. C. 505 (1894); 22 W. L. R. 785.

SEC. 1535. PLAINTIFF'S OFFICIAL CHARACTER, HOW DENIED.—If either party wishes to deny the right of any other party to claim as executor, or as trustee, or in other representative capacity, or as a corporation, he shall deny the same specially under oath, unless for cause shown he obtain leave of the court to make such denial without oath.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 544), repealing 31 Stat. L. pt. 1, p. 1189.

SEC. 1535a. Whenever in any action at law or in equity the defendant admits a part of the cause of action, a final judgment or decree may be entered for such part, and the plaintiff may prosecute the remainder of his claim in the same suit and (if he sustains his claim for such remainder) may have a further final judgment or decree therefor.

Interpolated by Act of April 19, 1920 (41 Stat. L. pt. 1, p. 569).
See section 399.

SEC. 1535b. TRANSFER FROM LAW TO EQUITY OR VICE VERSA.—In any case where it shall appear that an action at law should have been brought in equity, or a suit in equity should have been brought at law, the judge presiding in the special term, circuit or equity, as the case may be, shall order such case to be transferred to such other special term accordingly, whereupon such amendments shall be made in the pleadings as may be necessary to make them conform to the proper practice. All testimony taken before such transfer, if preserved, shall stand as testimony in the cause.

Id.

Gracie v. American Security & Trust Co., 51 App. D. C. 141 (1921); 50 W. L. R. 5. Equitable defense not urged in the trial court by bill or motion cannot be availed of on appeal; *Saks v. Steinmetz*, 54 App. D. C. 38 (1923).

SEC. 1535c. EQUITABLE DEFENSES AT LAW.—In all actions at law equitable defenses may be interposed by plea or replication.

Act of Apr. 19, 1920 (41 Stat. L. pt. 1, p. 569).

That hereafter section 1535c of the Code of Law for the District of Columbia, permitting equitable defenses to be interposed in actions at law, shall be applicable to proceedings now pending in the Municipal Court of the District of Columbia as well as to actions hereafter brought in said court.

Act of March 4, 1923 (42 Stat. L. pt. 1, p. 1506).

International Exch. Bank v. Pullo, 52 App. D. C. 199 (1922); 51 W. L. R. 22 (decided prior to 42 Stat. L. pt. 1, p. 1506).

SEC. 1535d. SUITS ON LOST INSTRUMENTS.—No suit at law founded upon a lost instrument shall be dismissed on the ground that the suit should have been brought in equity, but a similar bond or undertaking to that required in equity shall be given as a condition precedent to judgment.

Interpolated by Act of April 19, 1920 (41 Stat. L. pt. 1, p. 569).

Freeman v. W. B. Moses & Sons, 52 App. D. C. 164 (1922); 51 W. L. R. 6.

CHAPTER FIFTY

PROCESS

SEC. 1536. SUMMONS.—In all common-law civil suits and actions in the District of Columbia the process for compelling the defendant's appearance shall be a summons in the following form:

SUMMONS

In the supreme court of the District of Columbia.

A B, plaintiff, }
 versus } At law. Number____
C D, defendant. }

The President of the United States to the defendant,-----, greeting:

You are hereby summoned to appear in this court on or before the twentieth day, exclusive of Sundays and legal holidays, after the day of service of this writ upon you, to answer the plaintiff's suit and show why he should not have judgment against you for the cause of action stated in his declaration; and in case of your failure so to appear and answer, judgment will be given against you by default.

Witness the honorable -----, chief justice of said court, the ----- day of -----, anno Domini ----

-----, Clerk,
By -----, Assistant Clerk.

Engle v. Manchester, 46 App. D. C. 220 (1917); 45 W. L. R. 199.

Fischer v. Munsey Trust Co., 44 App. D. C. 212 (1915); 43 W. L. R. 820.

SEC. 1537. SERVICE ON FOREIGN CORPORATIONS.—In actions against foreign corporations doing business in the District all process may be served on the agent of such corporation or person conducting its business, or, in case he is absent and can not be found, by leaving a copy at the principal place of business in the District, or, if there be no such place of business, by leaving the same at the place of business or residence of such agent in said District, and such service shall be effectual to bring the corporation before the court.

When a foreign corporation shall transact business in the District without having any place of business or resident agent therein, service upon any officer or agent or employee of such corporation in the District shall be effectual as to suits growing out of contracts entered into or to be performed, in whole or in part, in the District of Columbia or growing out of any tort heretofore or hereafter committed in the said District.

Act of Feb. 1, 1907 (34 Stat. L. pt. 1, p. 874).

See sections 112, 445.

R. S. D. C., sec. 790, Comp. Stat. D. C. p. 445, sec. 26.

This section is constitutional. Hoffman v. Washington-Virginia Rwy. Co., 44 App. D. C. 418 (1916); 44 W. L. R. 103. "In this section Congress clearly

has recognized the distinction made by the Supreme Court of the United States between the doing of business within a state at a place regularly established therefor, and the intermittent transaction of business through agents who come and go. Notwithstanding that a corporation is deemed to be a resident of the State of its creation, if it goes within another State or jurisdiction, and there establishes a place of business from which, through its authorized agents, its business is transacted, it must be regarded as also within that jurisdiction." *Ib.*

"It will be observed that the statute is not confined to general agency or an established custom of doing business, but it applies to a suit growing out of a contract 'entered into or to be performed, in whole or in part, in the District of Columbia.'" *Berkeley v. Culley*, 42 App. D. C. 140 (1914); 42 W. L. R. 294.

What constitutes doing business in the District of Columbia: *Wendell v. Holland American Line*, 40 App. D. C. 1 (1913); 41 W. L. R. 83, citing *Ferguson Contracting Co. v. Coal & Coke R. Co.*, 33 App. D. C. 159; 37 W. L. R. 242. *Doremus v. National Cotton Impr. Co.*, 39 App. D. C. 295 (1912); 41 W. L. R. 2, citing *Ricketts v. Sun Printing & Pub. Co.*, 27 App. D. C. 222; 34 W. L. R. 287. *N. Y. Continental Filtration Co. v. Karr*, 31 App. D. C. 459; 36 W. L. R. 457. *Mitchell Min. Co. v. Emig*, 35 App. D. C. 527; 38 W. L. R. 699. *Toledo Computing Scales Co. v. Miller*, 38 App. D. C. 237; 40 W. L. R. 136.

See also *Guilford Granite Co. v. Harrison Granite Co.*, 23 App. D. C. 1 (1903); 31 W. L. R. 759, citing *Howard v. Chesapeake & O. R. Co.*, 11 App. D. C. 300; 25 W. L. R. 750. *Ambler v. Archer*, 1 App. D. C. 94 (1893); 21 W. L. R. 600.

CHAPTER FIFTY-ONE

QUO WARRANTO

SEC. 1538. AGAINST WHOM ISSUED.—A quo warranto may be issued from the supreme court of the District in the name of the United States—

First. Against a person who usurps, intrudes into, or unlawfully holds or exercises within the District a franchise or public office, civil or military, or an office in any domestic corporation.

Second. Against any one or more persons who act as a corporation within the District without being duly authorized, or exercise within the District any corporate rights, privileges, or franchises not granted them by the laws in force in said District.

And said proceedings shall be deemed a civil action.

See section 586.

Newman v. U. S. ex rel. Frizzell, 238 U. S. 537 (1915), reversing 43 App. D. C. 53. See also *Same v. Same*, 42 App. D. C. 78. *Hayes v. Burns*, 25 App. D. C. 243; 33 W. L. R. 200, appeal dismissed 201 U. S. 650.

SEC. 1539. WHO MAY INSTITUTE.—The Attorney-General or the district attorney may institute such proceeding on his own motion, or on the relation of a third person. But such writ shall not be issued on the relation of a third person except by leave of the court, to be applied for by the relator, by a petition duly verified, setting forth the grounds of the application, or until the relator shall file a bond with sufficient surety, to be approved by the clerk of the court, in such penalty as the court may prescribe, conditioned for the payment by him of all costs incurred in the prosecution of the writ in case the same shall not be recovered from and paid by the defendant.

See annotations to section 1538.

SEC. 1540. IF ATTORNEY-GENERAL AND DISTRICT ATTORNEY REFUSE.—If the Attorney-General and district attorney shall refuse to institute such proceeding on the request of a person interested, such person may apply to the court by verified petition for leave to have said writ issued; and if in the opinion of the court the reasons set forth in said petition are sufficient in law, the said writ shall be allowed to be issued by any attorney, in the name of the United States, on the relation of said interested person, on his compliance with the condition prescribed in the last section as to security for costs.

See annotations to section 1538.

SEC. 1541. RELATOR CLAIMING OFFICE.—When such proceeding is against a person for usurping an office, on the relation of a person claiming the same office, the relator shall set forth in his petition the facts upon which he claims to be entitled to the office.

See annotations to section 1538.

SEC. 1542. NOTICE TO DEFENDANT.—On the issuing of the writ the court may fix a time within which the defendant may appear and

answer the same. If the defendant can not be found in the District, the court may direct notice to be given to him by publication as in other cases of proceedings against nonresident defendants, and upon proof of publication, if the defendant shall not appear, judgment may be rendered as if he had been personally served.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 544).

SEC. 1543. If the defendant shall not appear as required by the writ, after being personally served, the court may proceed to hear proof in support of the writ, and render judgment accordingly.

SEC. 1544. PLEADING.—The defendant may demur or plead specially or plead "Not guilty" as the general issue, and the United States may reply as in other actions of a civil character; and any issue of fact shall be tried by a jury if either party shall require it, otherwise it shall be determined by the court.

SEC. 1545. VERDICT.—Where the defendant is found by the jury to have usurped or intruded into or unlawfully held or exercised an office or franchise, the verdict shall be that he is guilty of the act or acts in question, and judgment shall be rendered that he be ousted and excluded therefrom and that the relator recover his costs.

SEC. 1546. USURPING CORPORATE FRANCHISE.—Where the proceeding is against persons acting as a corporation without being legally incorporated, the judgment against the defendants shall be that they be perpetually restrained and enjoined from the commission or continuance of the acts complained of.

SEC. 1547. ELECTIONS OF DIRECTORS, AND SO FORTH.—Where the proceeding is against a director or trustee of a corporation and the court finds that at his election either illegal votes were received or legal votes rejected, or both, sufficient to change the result if such error be corrected, judgment may be rendered that the defendant be ousted, and that the relator, if entitled to be declared elected, be admitted to the office, and a mandamus may be issued to the proper parties, being officers or members of said corporation, to admit him to said office. The said judgment may require the defendant to deliver to the relator all books, papers, and other things in his custody or control pertaining to the said office, and obedience to said judgment may be enforced by attachment.

SEC. 1548. ACTION AGAINST INTRUDER FOR DAMAGES.—At any time within a year after such judgment the said relator may bring an action against the party ousted and recover the damages sustained by him by reason of such usurpation of the office to which he was entitled.

CHAPTER FIFTY-TWO

REPLEVIN

SEC. 1549. WILL LIE FOR WHAT.—In any action of replevin brought to recover any personal property to which the plaintiff is entitled, which may have been wrongfully taken by or may be in the possession of and wrongfully detained by the defendant, it shall not be necessary to demand possession of said property before bringing the action therefor; but in such cases the costs of the action shall be awarded as the court may order.

As to jurisdiction of equity to decree delivery of specific property, in view of the provisions of secs. 1549 et seq., see *Dante v. Hutchins*, 49 App. D. C. 348 (1920); 48 W. L. R. 450.

As to right to maintain replevin to recover possession of promissory notes, see *District National Bank v. Trimble*, 46 App. D. C. 319 (1917); 45 W. L. R. 324.

Common law rules prevail as to powers of officers in executing a writ of replevin. "The rule of the common law * * * seems to be that an officer, in executing a writ of replevin, may not break an outer door or window of a dwelling to gain entrance to seize the property of the occupant or of a person rightfully domiciled therein. He may enter either an open outer door or window, provided it can be accomplished without committing a breach of the peace; he may then, after a request and refusal, break open any inner doors belonging to the defendant, in order to take the goods. We think a further reasonable rule is deducible from the cases, that when an officer, in the execution of a writ, finds an outer door or window slightly ajar, but not sufficiently so to admit him, he may open the door or window, provided he does not find it obstructed, but if it is fastened or obstructed so as to require force to overcome the obstruction, he may not use such force, for such an entrance would constitute a breaking." *Palmer v. King*, 41 App. D. C. 419 (1914); 42 W. L. R. 118.

As to replevy of goods, title to which is procured by fraud, see *Samaha v. Mason*, 27 App. D. C. 470 (1906); 34 W. L. R. 403.

Replevy of goods taken by police from person accused of crime, see *Mutual Commission & Stock Co. v. Moore*, 13 App. D. C. 78 (1898); 26 W. L. R. 421.

SEC. 1550. DECLARATION.—The declaration in replevin shall be in the following or equivalent form: "The plaintiff sues the defendant for (wrongly taking and detaining) (unjustly detaining) his, said plaintiff's, goods and chattels, to wit: (describe them) of the value of ——— dollars. And the plaintiff claims that the same be taken from the defendant and delivered to him; or, if they are eloiigned, that he may have judgment of their said value and all mesne profits and damages, which he estimates at ——— dollars, besides costs."

See section 13.

R. S. D. C., sec. 814, Comp. Stat. D. C. p. 470, sec. 127.

See also *Wall v. DeMitkiewicz*, 9 App. D. C. 109 (1896); 26 W. L. R. 421.

SEC. 1551. AFFIDAVIT.—At the time of filing the declaration in replevin, the plaintiff, his agent, or attorney shall file an affidavit stating—

First. That, according to affiant's information and belief, the plaintiff is entitled to recover possession of chattels proposed to be replevied, being the same described in the declaration.

Second. That the defendant has seized and detained or detains the same.

Third. That said chattels were not subject to such seizure or detention and were not taken upon any writ of replevin *between the parties*.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 544).

See section 13.

R. S. D. C., sec. 815, Comp. Stat. D. C., p. 470, sec. 128.

SEC. 1552. UNDERTAKING.—The plaintiff shall at the same time enter into an undertaking by himself or his agent with surety, approved by the clerk, to abide by and perform the judgment of the court in the premises.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 544), repealing 31 Stat. L. pt. 1, p. 1189.

See section 13.

R. S. D. C., sec. 816, Comp. Stat. D. C., p. 470, sec. 129.

SEC. 1553. IF GOODS NOT SEIZED.—If the officer's return of the writ of replevin be that he has served the defendant with copies of the declaration, notice to plead, and summons, but that he could not get possession of the goods and chattels sued for, the plaintiff may prosecute the action for the value of the same and damages for detention, or he may renew the writ in order to get possession of the goods and chattels themselves.

See section 14.

R. S. D. C., sec. 817, Comp. Stat. D. C., p. 470, sec. 130.

SEC. 1554. PUBLICATION AGAINST DEFENDANT.—If the officer's return be that he has taken possession of the goods and chattels sued for, but that the defendant is not to be found, the court, *subject to the provisions of section one hundred and eight hereof as to mailing notice*, may order that the defendant appear to the action by some fixed day; and of this order the plaintiff shall cause notice to be given by publication in some newspaper of the District at least three times, the first of which shall be at least twenty days before the day fixed for the defendant's appearance.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 544).

See section 15.

R. S. D. C., sec. 818, Comp. Stat. D. C., p. 470, sec. 131.

SEC. 1555. DEFAULT.—If the defendant fails to appear, the court may proceed as in case of default after personal service.

R. S. D. C., sec. 819, Comp. Stat. D. C., p. 471, sec. 132. *

SEC. 1556. PLEADING.—If the defendant appear he may plead not guilty, in which case all special matters of defense may be given in evidence, or he may plead specially.

See section 16.

R. S. D. C., sec. 820, Comp. Stat. D. C., p. 471, sec. 133.

SEC. 1557. MOTION FOR RETURN.—On the taking possession of the goods and chattels by the marshal *or coroner* by virtue of the writ of replevin, the defendant may, on one day's notice to the plaintiff or his attorney, move for a return of the property to his possession; and the court may thereupon inquire into the circumstances and manner of the defendant's obtaining possession of such property, and if it shall seem just may order the property to be returned to the pos-

session of the defendant, to abide the final judgment in the action, and may, in its discretion, require the defendant to enter into an undertaking, with surety or sureties, similar to that required of the plaintiff upon the commencement of the action, and in such case a judgment for the plaintiff shall be rendered against the surety or sureties, as well as against the defendant. If it shall appear that the possession of the property was forcibly or fraudulently obtained by the defendant, or that the possession, being first in the plaintiff, was procured or retained by the defendant without authority from the plaintiff, the court may refuse to order the return. The defendant may also, on similar notice, object to the sufficiency of the security in the undertaking, and the court may require additional security, in default of which the property shall be returned to the defendant, but the action may proceed as if the property had not been taken.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 544).

Act of Md. of 1785, ch. 80, sec. 14, Comp. Stat. D. C., p. 472, sec. 143.

SEC. 1558. OFFICER'S DUTY.—If the defendant shall notify the officer taking possession of the property, in writing, of his intention to make either of the motions aforesaid, it shall be the duty of the officer to retain possession of the property until said motion shall be disposed of, provided that the same shall be filed and notice given, as aforesaid, to the plaintiff, or his attorney, within two days thereafter.

See section 17.

SEC. 1559. DAMAGES.—Whether the defendant plead and the issue thereon joined is found against him, or his plea is held bad on demurrer, or he makes default after personal service or after publication, the plaintiff's damages shall be ascertained by the jury trying the issue, where one is joined, or by a jury of inquest, where there is no issue of fact, and the damages shall be the full value of the goods, if eloiigned by the defendant, including, in every case, the loss sustained by the plaintiff by reason of the detention, and judgment shall pass for the plaintiff accordingly.

See section 18.

R. S. D. C., sec. 821, Comp. Stat. D. C., p. 471, sec. 134.

SEC. 1560. JUDGMENT FOR DEFENDANT.—If the issue be found for the defendant, or the plaintiff dismiss or fail to prosecute his suit, the judgment shall be that the goods, if delivered to the plaintiff, be returned to the defendant with damages, or, on failure, that the defendant recover against the plaintiff and his surety the damages by him sustained, to be assessed by the jury trying the issue; or, where the plaintiff dismisses or fails to prosecute his suit, by the jury of inquest.

See section 19.

R. S. D. C., sec. 822, Comp. Stat. D. C., p. 471, sec. 135.

Corbett v. Pond, 10 App. D. C. 17 (1897); 25 W. L. R. 33.

SEC. 1561. If the defendant has eloiigned the things sued for the court may instruct the jury, if they find for the plaintiff, to assess such damages as may compel the defendant to return the things.

R. S. D. C., sec. 823, Comp. Stat. D. C., p. 471, sec. 136.

SEC. 1562. JUDGMENT FOR PLAINTIFF.—The judgment in such cases shall be that the plaintiff recover against the defendant the value of the goods as found and the damages so assessed, to be discharged by the return of the things, within ten days after the judgment, with damages for detention, which the jury shall also assess.

R. S. D. C., sec. 824, Comp. Stat. D. C., p. 471, sec. 137.

CHAPTER FIFTY-THREE

SET-OFF

SEC. 1563. WHAT CAN BE SET-OFF.—Mutual debts and claims under contract between the parties to a common-law action, *or between any of the several defendants and the plaintiff*, or between one party and the testator or intestate of the other, or between the testators or intestates of both parties, may be set off against each other by plea in bar, whether said debts or claims be of the same or a different nature or degree, and whether the claims be for liquidated debts or unliquidated damages for breach of contract; and if either debt be in the form of the penalty of a bond the exact sum to be set off shall be stated in the plea.

R. S. D. C., sec. 810, Comp. Stat. D. C., p. 443, sec. 11.

32 Stat. L. pt. 1, p. 544.

Set-off must be specially pleaded. *Simmons v. Jaselli*, 38 App. D. C. 242 (1912); 40 W. L. R. 131. See also *Knight v. Brick Co.*, 23 App. D. C. 519 (1904); 32 W. L. R. 327.

Plea of recoupment, *Hornblower v. Geo. Wash'n University*, 31 App. D. C. 64 (1908); 36 W. L. R. 283. *Fitzgerald v. Wiley*, 22 App. D. C. 329 (1903); 31 W. L. R. 491. *Durant v. Murdock*, 3 App. D. C. 114 (1894); 22 W. L. R. 349.

Plea of set-off "must state facts which not only bring it within the privilege of set-off, but would also constitute a good cause of action if the party pleading were the plaintiff in the prosecution of a suit therefor. And while the technical formality and accuracy of a declaration may not be required, the plea must, nevertheless, inform the plaintiff, with reasonable certainty, of the particulars of the demand which he is called upon to defend." *McGuire v. Gerstley*, 26 App. D. C. 193 (1905); 33 W. L. R. 754, affirmed in 204 U. S. 489.

Set-off in equity, *Fedarwisch v. Alsop*, 18 App. D. C. 318 (1901); 29 W. L. R. 367. *Carver v. Hall*, 3 App. D. C. 170 (1894); 22 W. L. R. 290. *Fitzgerald v. Wiley*, 22 App. D. C. 329 (1903); 31 W. L. R. 491.

Prior to Code: *Samaha v. Samaha*, 18 App. D. C. 96 (1901); 29 W. L. R. 176 (right of plaintiff to dismiss action after plea filed). *U. S. v. West*, 8 App. D. C. 59 (1896); 24 W. L. R. 133 (when a plea of set-off only is filed, it is equivalent to a plea of confession and avoidance and transfers burden of proof to defendants). *Durant v. Murdock*, 3 App. D. C. 114 (1894); 22 W. L. R. 349 (plea of set-off barred on its face by statute of limitations can not be pleaded to prevent a summary judgment under 73d rule).

SEC. 1564. FORM OF PLEA.—The plea of set-off may be as follows: That the plaintiff, at the commencement of the suit, was, and still is, indebted to the defendant in the sum of ----- dollars, for that, and so forth, as appears by the particulars of said indebtedness hereunto annexed; and defendant is willing that the same may be set off against the plaintiff's demand.

R. S. D. C., sec. 811, Comp. Stat. D. C., p. 443, sec. 12.

SEC. 1565. SET-OFF AN ACTION BY DEFENDANT.—A defendant who files a plea of set-off, founded on a claim against the plaintiff, shall be deemed to have brought an action at the time of filing such plea against the plaintiff for the matters mentioned in the plea; but it shall not be necessary that the amount of the claim so sought to be

set off shall be such that the court would have jurisdiction of an original action to recover the same; and the plaintiff shall not thereafter be allowed to dismiss his suit without the consent of the defendant, but the defendant shall be entitled to a trial of and judgment upon his claim, but the same shall be open to the same defenses to which it would be open in an action brought by him thereon; and on the trial of an issue on said plea of set-off judgment shall be rendered for the balance found due, whether to the plaintiff or to the defendant, with costs: *Provided*, That nothing herein contained shall be construed to enlarge the jurisdiction of justices of the peace so as to authorize any judgment by any such justice in excess of three hundred dollars.

See Municipal Court Acts, Appendix, pp. 519, 521.

See annotations to section 1563.

SEC. 1566. EFFECT OF ASSIGNMENT.—When cross demands have existed between persons under such circumstances that if one had brought an action against the other a counterclaim or set-off could have been pleaded, neither can be deprived of the benefit thereof by an assignment by the other; but in an action by the assignee of any nonnegotiable debt the defendant may set off any indebtedness to him of the assignor, existing before notice of the assignment, as well as any indebtedness to him of the plaintiff.

“Taking this section as a whole, it is resolved into the statement that in an action by the assignee of any nonnegotiable debt, the defendant may set off any indebtedness to him of the assignor. The terms used are wholly inapplicable to negotiable instruments. According to accurate legal terminology, the person who transfers a promissory note is not called an assignor, but an indorser; the person to whom it is transferred is not designated the assignee, but the indorsee; and the use of the words ‘nonnegotiable debt,’ as meaning a negotiable promissory note would be a startling neologism.” *Lincoln v. Grant*, 47 App. D. C. 475 (1918); 46 W. L. R. 246.

SEC. 1567. SET-OFF AS TO PART.—If the defendant’s plea of set-off covers or applies to only part of the plaintiff’s demand judgment may be forthwith rendered for the part not controverted and the costs accrued until the filing of the plea, and the case shall be proceeded with for the residue as if the part for which judgment was rendered had not been included therein.

SEC. 1568. ACTION AGAINST PRINCIPAL AND SURETIES.—In an action against principal and sureties an indebtedness of the plaintiff to the principal may be set off as if he were the sole defendant, and in such case, if the indebtedness so set off shall exceed the plaintiff’s demand, the judgment for the excess shall be in favor of the defendant, who is sued as principal.

McGuire v. Gerstley, 26 App. D. C. 193 (1905); 33 W. L. R. 754, affirmed, 204 U. S. 489.

SEC. 1569. ACTION BY TRUSTEE.—If the plaintiff is trustee for another, or has no actual interest in the contract on which the action is founded, a demand against the plaintiff shall not be pleaded by way of set-off, but a demand against the person whom he represents or for whose benefit the action is brought may be pleaded.

SEC. 1570. ACTION BY OR AGAINST EXECUTOR, AND SO FORTH.—In an action against an executor or administrator, in his representative capacity, the defendant may plead, by way of set-off, a demand belonging to the decedent where he would have been entitled to rely

upon the same in an action against him; and in an action brought by an executor or administrator, in his representative capacity, a demand against the decedent, belonging at the time of his death to the defendant, may be pleaded by way of set-off, as if the action had been brought by the decedent in his lifetime.

SEC. 1571. SETTING OFF JUDGMENTS.—Where reciprocal claims between different parties have passed into judgments the court may, on motion, in its discretion, order that the judgments shall be set off against each other and satisfaction of both be entered to the amount of the smaller claim.

R. S. D. C., sec. 813, Comp. Stat. D. C., p. 443, sec. 14.

Fedarwisch v. Alsop, 18 App. D. C. 318 (1901) ; 29 W. L. R. 367.

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CHAPTER FIFTY-FOUR

SURETIES

SEC. 1572. COUNTER SECURITY.—When the surety, or his personal representatives, of any officer, commissioner, receiver, or trustee appointed under a decree of court and required to give bond shall apprehend himself to be in danger of suffering from the suretyship and shall petition the court to be relieved from the suretyship, or that the court shall require said officer, commissioner, receiver, or trustee to give counter security, the court may, on reasonable notice to the trustee or other officer, require him to give counter security or to give a new bond in the same manner as if none had been given by him, and on his failure so to do by a day named may remove him from his office or trust and appoint a new trustee or other officer in his stead to complete the duties of his office or trust, and may thereupon order him to deliver over to his successor all the trust property, including moneys, books, papers, bonds, notes, and evidences of debt, and may compel compliance with said order by attachment.

See sections 128, 154.

SEC. 1573. JUDGMENTS AGAINST.—Where any person shall recover a judgment or money decree against the principal debtor and a surety or indorser, and the judgment shall be satisfied by the surety or indorser, the latter shall be entitled to have the judgment or money decree entered by the clerk to his use and to have execution in his own name against the principal, and where any judgment or money decree shall be rendered against several sureties and one of them shall satisfy the whole debt, the said surety shall be entitled to have the judgment or decree entered to his use, as aforesaid, and to have execution against each of the other sureties in the judgment or decree for a proportionate part of the debt so paid by him; and on the motion of said surety so paying the entire debt and notice to the other sureties the court may determine for what amount execution shall issue against each of the other sureties.

See section 1568.

CHAPTER FIFTY-FIVE

SURVEYOR

SEC. 1574. OFFICE.—The office of the surveyor of the District shall be the legal office of record of the plats and subdivisions of all private property in the District of Columbia and of all property belonging to the District of Columbia. And the copies of all records of the division of squares and lots made between the public and the original proprietors and all plats, papers, books, maps, and records now in the office of the surveyor shall remain therein.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 544), repealing 31 Stat. L. pt. 1, p. 1189.

R. S. D. C., sec. 472, Comp. Stat. D. C., p. 513, sec. 1.

SEC. 1575. TRANSCRIPTS.—All transcripts from such records certified by the surveyor shall be prima facie evidence thereof.

R. S. D. C., sec. 473, Comp. Stat. D. C., p. 514, sec. 2.

[SEC. 1576. RECORDS.—The records of the surveyor of the District of Columbia shall be a part of the United States property under the jurisdiction of the Commissioners of the District of Columbia.]

Repealed by act of June 30, 1902 (32 Stat. L. pt. 1, p. 544).

SEC. 1577. SALARY.—The surveyor of the District of Columbia shall receive a salary of three thousand dollars per annum in lieu of fees, and shall be appointed by the Commissioners of the District of Columbia for a term of four years, unless sooner removed for cause, and shall be under the direction and control of the said Commissioners.

Act of Feb. 28, 1895 (28 Stat. L. p. 689), sec. 1.

SEC. 1578. BOND.—The surveyor shall give bond to the United States in the penalty of twenty thousand dollars, with security, to be approved by the Commissioners, conditioned for the faithful discharge of the duties of his office, and shall take and subscribe an oath or affirmation before the Commissioners that he will faithfully and impartially discharge the duties of his office, which bond and oath shall be deposited with the Commissioners of the District of Columbia.

Act of Feb. 28, 1895 (28 Stat. L. p. 689), sec. 2.

SEC. 1579. ASSISTANT SURVEYOR.—The Commissioners of the District of Columbia, on the recommendation of the surveyor, are hereby authorized to appoint one assistant surveyor, at a salary of one thousand eight hundred dollars per annum, and such employees as may in the judgment of the Commissioners of the District of Columbia be required for the surveyor's office and operation, at an aggregate expense of not exceeding ten thousand dollars in any one year.

Act of Feb. 28, 1895 (28 Stat. L. p. 689), sec. 3.

SEC. 1580. SCALE OF PLATS.—The plats and squares and subdivisions of the city of Washington shall be drawn upon a uniform scale of not less than one inch to fifty feet, and shall show the lines of all subdivisions of the squares as the same existed at the date of the completion of each square.

R. S. D. C., sec. 475, Comp. Stat. D. C., p. 514, sec. 5.

SEC. 1581. SUBDIVISIONS.—Whenever the proprietor of any square or lot shall deem it necessary to subdivide the same into convenient building lots or portions for sale and occupancy and alleys for their accommodation, he may cause a plat to be made by the surveyor, on which shall be expressed the dimensions and length of all the lines of such portions as are necessary for defining and laying off the same on the ground, and may certify such subdivision under his hand and seal, in the presence of two or more credible witnesses, upon the same plat or on a paper or parchment attached thereto.

R. S. D. C. sec. 477, Comp. Stat. D. C., p. 514, sec. 7.

SEC. 1582. At the request of the proprietor the surveyor shall examine whether the lots or parcels into which any square or lot may be subdivided as provided in the preceding section agree in dimensions with the whole of the square or lot so intended to be subdivided, and whether the dimensions expressed on the plat of subdivision be the true dimensions of the parts so expressed; *and whether said lots or parcels conform to the general orders of the Commissioners of the District of Columbia made under existing law or under authority of section sixteen hundred and one of this code; and if upon such examination he shall find the plat correct he shall certify the same under his hand and seal to the said Commissioners with such remarks as appear to him necessary; but no such plat or subdivision shall be admitted to record in the office of the surveyor without an order to that effect, indorsed thereon by said Commissioners.*

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 544).

R. S. D. C., sec. 478, Comp. Stat. D. C., p. 514, sec. 8.

SEC. 1583. REFERENCE TO SUBDIVISIONS.—When a subdivision of any square or lot shall be so certified, examined, and recorded, the purchaser of any part thereof or any person interested therein may refer to the plat and record for description in the same manner as to squares and lots divided between the Commissioners and original proprietors.

R. S. D. C., sec. 479, Comp. Stat. D. C., p. 514, sec. 9.

SEC. 1584. ALLEYS.—The ways, alleys, or passages laid out or expressed on any plat of subdivision shall be and remain at all times under the same police regulations as the alleys laid off by the Commissioners on division with the original proprietors.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 544).

R. S. D. C., sec. 480, Comp. Stat. D. C. p. 514, sec. 10.

SEC. 1585. DEFICIENCY OR EXCESS IN NUMBER OF FEET.—Whenever the surveyor shall lay off any lot, or any parts into which a square or lot may be subdivided, as provided in this chapter, he shall measure the whole of that front of the square on which said lot or

part lies, and if, on such admeasurement, the whole front of the square exceeds or falls short of the aggregate of the fronts of the lots on that side of the square, as the same are recorded, he shall, except in that portion of the city of Washington included within the limits of what formerly constituted the city of Georgetown, apportion such excess or deficiency among the lots or pieces on that front agreeably to their respective dimensions; and in that portion of the city of Washington included within the limits of what formerly constituted the city of Georgetown he shall allow such excess or charge such deficiency to the highest numbered original lot on that front of the square, or apportion such excess or deficiency among any lots into which such highest numbered original lot may have been subdivided: *Provided*, That wherever in the former city of Georgetown a square or block of land is intersected by the division line between two original additions to said city, the excess or deficiency found between the street lines and said division line shall be applied to the highest numbered original lot on each side of said division line, or apportioned among any lots into which such highest numbered original lot may have been subdivided.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 544), repealing 31 Stat. L. pt. 1, p. 1189.

R. S. D. C., sec. 481, Comp. Stat. D. C., p. 514, sec. 11.

SEC. 1586. PARTY WALLS.—Whenever, on such admeasurement, the wall of a house previously erected by any proprietor shall appear to stand on the adjoining lot of any other person in part less than seven inches in width thereon, such wall shall be considered as standing altogether on the land of such proprietor, who shall pay to the owner of the lot on which the wall may stand a reasonable price for the ground so occupied, to be decided by arbitrators or a jury, as the parties interested may agree.

R. S. D. C., sec. 482, Comp. Stat. D. C., p. 515, sec. 12.

Re party walls, see:

Smoot v. Heyl, 34 App. D. C. 480 (1910); 38 W. L. R. 218, affirmed in 227 U. S. 518.

Robinson v. Hillman, 36 App. D. C. 576 (1911); 39 W. L. R. 275.

Kosack v. Johnson, 38 App. D. C. 62 (1911); 40 W. L. R. 340.

Schwartz v. Atlantic Building Co., 41 App. D. C. 108 (1913).

Robinson v. Hillman, 41 App. D. C. 191 (1913); 42 W. L. R. 9.

Fowler v. Koehler, 43 App. D. C. 349 (1915); 43 W. L. R. 210.

Mann v. Boyts, 47 App. D. C. 356 (1918); 46 W. L. R. 104.

Gish v. Walker, 48 App. D. C. 42 (1918); 46 W. L. R. 296, certiorari denied 248 U. S. 565.

Walker v. Gish, 51 App. D. C. 4 (1921); 49 W. L. R. 357.

Johnson v. Simmons, 53 App. D. C. 356 (1923); 51 W. L. R. 569.

SEC. 1587. If the wall of any house already erected cover seven inches or more in width of the adjoining lot, it shall be deemed a party wall, according to the regulations for building in the District, and the ground so occupied more than seven inches in width shall be paid for as provided in the preceding section.

R. S. D. C., sec. 483, Comp. Stat. D. C., p. 515, sec. 13.

SEC. 1588. The surveyor shall ascertain and certify and put on record, at the request and expense of any person interested therein, the fact of the occupation of land by a party wall, as mentioned in the preceding section.

R. S. D. C., sec. 484, Comp. Stat. D. C., p. 515, sec. 14.

SEC. 1589. ADJUSTING LINES OF BUILDINGS.—It shall be the duty of the surveyor to attend and examine the foundation or walls of any house to be erected for the purpose of adjusting the line of the front of such building to the line of the street and correctly placing the party wall on the line of division between that and the adjoining lot; and his certificate of the fact shall be admitted as evidence and binding on the parties interested.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 545).

R. S. D. C., sec. 485, Comp. Stat. D. C., p. 515, sec. 15.

SEC. 1590. ORDER OF SURVEY TO BE SPEEDILY EXECUTED.—The surveyor shall, as speedily as possible, execute any order of survey made by any court or private individual of any lot or square within the city of Washington, or of any land within the District of Columbia outside of said city, and shall make due return of a true plat and certificate thereof.

Act of Feb. 28, 1895 (28 Stat. L. p. 689).

SEC. 1591. SURVEYS FOR DISTRICT.—It shall be the duty of the surveyor to execute any surveying work for the District of Columbia without charge, on the order of the Commissioners; and all fees for surveys made by the surveyor or the assistant surveyor shall be paid over to the collector of taxes of the District of Columbia under regulations to be prescribed by the Commissioners of the District of Columbia, and be covered into the Treasury of the United States as other revenues of the District are now; and the field notes of the surveyor and his assistant shall be preserved and shall be a part of the public property of the District of Columbia, and all records, plats, plans, and other papers or documents now existing, or hereafter made or secured by the office of the said surveyor, shall be delivered by each surveyor to his successor in office, and no plat or survey of land shall be recorded in the office of the surveyor of the District of Columbia except it be certified to as correct by the surveyor of said District.

Ib.

SEC. 1592. ASSISTANT SURVEYOR'S DUTIES.—The assistant surveyor shall take the same oath his principal is required to take, and may, during the continuance of his office, discharge and perform any of the official duties of his principal, and any default or misfeasance in office by the assistant surveyor, or other assistant or helper of the surveyor, shall be deemed a breach of the official bond of his principal.

Ib.

SEC. 1593. FEES.—The Commissioners of the District of Columbia are hereby authorized from time to time to prescribe a schedule of fees to be charged by the surveyor for his services, which schedule shall be printed and conspicuously displayed in the office of the surveyor.

Ib.

SEC. 1594. SUBDIVISIONS OF UNITED STATES SQUARES.—Whenever the President shall deem it necessary to subdivide any square or lot belonging to the United States within the city of Washington, not reserved for public purposes, into convenient building lots or portions for sale and occupancy, and alleys for their accommodation, he may cause a plat to be made by the surveyor in the manner prescribed in

this chapter, which plat shall be recorded by the surveyor; and the provisions of this chapter shall extend to the lots, pieces, and parcels of ground contained in such plat as fully as to subdivisions made by individual proprietors.

Act of Feb. 28, 1895 (28 Stat. L. 689).

R. S. D. C. Sec. 487, Comp. St. D. C., p. 516, sec. 17.

SEC. 1595. ALTERATIONS OF BOUNDARIES, AND SO FORTH.—Whenever the proprietor of any tract or parcel of land in the District of Columbia shall desire or deem it necessary to subdivide or alter boundaries, or change the surveys of any such tract or parcel of land, such subdivision, alteration, or change shall be by the surveyor of the District of Columbia, or his assistant, only, and shall be entered in the plat book or books of said surveyor. All such subdivisions, alterations, or changes shall be certified by the surveyor, the party wishing such plat, and two competent witnesses, whose names shall be appended thereto.

Act of Leg. Assembly, D. C. of August 23, 1871, Comp. St. D. C. p. 516, sec. 19.

SEC. 1596. RECORDS OF DIVISIONS.—All records, or copies thereof, of the divisions of squares and lots heretofore made between the public and the original proprietors, or which are authorized by this chapter, shall be kept in the office of the surveyor of the District of Columbia, and the surveyor shall put up, label, index, and preserve all the maps, charts, plats, plans, and other drawings and papers relating to the District of Columbia or which appertain to his office, and which may come to his office for deposit, record, or otherwise.

Ib., section 20.

SEC. 1597. ERRORS.—Whenever it shall be made to appear to the satisfaction of the Commissioners that the surveyor has been guilty of culpable error or neglect, by which the District may be obliged to pay damages, it shall be lawful for the Commissioners to deduct and retain from the salary of the surveyor the amount of damages which the District may have paid in each and every case; and in case the salary then due the said surveyor shall be insufficient to cover the damages which the District shall have paid the Commissioners are hereby required to institute suit upon the bond of the surveyor for the recovery of such damages.

Ib., section 22.

SEC. 1598. BOUNDARIES OF LOTS TO BE MARKED.—It shall also be the duty of the surveyor on the request of the proprietor or proprietors of any square, lot, or piece of ground within the District of Columbia to set out and mark the proper lines, and furnish to him, her, or them a certificate describing the dimensions and boundaries of the same, according to the plan.

Ib., section 23.

SEC. 1599. BOOKS, MAPS, AND SO FORTH, TO BE KEPT BY SURVEYOR.—The surveyor shall keep his office in a room designated by the Commissioners for the purpose, and shall not be engaged in the transaction of any business appertaining to any other office or appointment which may be held by him, and shall in his said office preserve and keep all such maps, charts, surveys, books, records, and papers re-

lating to the District of Columbia, or to any of the avenues, streets, alleys, public spaces, squares, lots, and buildings thereon, or any of them, as shall for the purpose of being deposited in his office come into his hands or possession; and shall, in books provided or to be provided for that purpose, keep a true record of every survey, certificate, or account which shall be made, issued, or prepared by him, and also shall preserve and keep in good order and repair the instruments in his said office belonging to the District.

Ib., section 24.

SEC. 1600. PAPERS, AND SO FORTH, TO BE THE PROPERTY OF THE DISTRICT OF COLUMBIA.—All papers, plats, *books*, *maps*, and records of his office shall be deemed the property of the District of Columbia, and shall constitute a part of the public records; and in all cases of vacancy in the office, by resignation or otherwise, they shall be transferred to his successor in office.

Ib., section 25.

Act of June 30, 1902 (32 Stat. L., pt. 1, p. 545).

SEC. 1601. PLATS, WHEN TO BE RECORDED.—The Commissioners are authorized and directed to make and publish such general orders as may be necessary to regulate the platting and subdividing of all lands and grounds in the District of Columbia under their jurisdiction; and no such plat of subdivision made in pursuance of such orders shall be admitted to record in the office of the surveyor of said District without an order to that effect indorsed thereon by the Commissioners of said District.

Act of August 27, 1888 (25 Stat. L. 451).

Ross v. U. S. ex rel. Goodfellow, 7 App. D. C. 1 (1895), 23 W. L. R. 385.

U. S. ex rel. Realty Co. v. Macfarland, 32 App. D. C. 53 (1908), 36 W. L. R. 711.

SEC. 1602. STREETS, AND SO FORTH.—All spaces on any duly recorded plat of land thereon designated as streets, avenues, or alleys shall thereupon become public ways, provided they are made in conformity with the preceding section.

U. S. ex rel. Columbia Heights Realty Co. v. Macfarland, 32 App. D. C. 53 (1908); 36 W. L. R. 711.

Rededication of alleys: "To make such a dedication requires not alone that the street or alley be given, but that it be accepted. The reason for this is self-evident. The acceptance of a public street or alley imposes burdens on the District. 'The law is well settled that, to constitute a public street or highway by dedication, there must not only be an absolute dedication—by a setting apart and a surrender to the public use of the land by the proprietors—but there must be an acceptance and a formal opening thereof by the proper authorities, or a user which is equivalent to such acceptance and opening.'" Watson v. Carver, 27 App. D. C. 555 (1906); 34 W. L. R., 483. "There was no valid statutory dedication, for an essential provision of the statute was not complied with, and without this there could be no valid statutory dedication." *Ib.*

SEC. 1603. CEMETERIES.—If by the extension of any of the present streets or avenues or the opening of any public way it becomes necessary to traverse any grounds now used as a cemetery or place of burial, the Commissioners are empowered to secure a right of way through the same by stipulation with the proprietors thereof.

SEC. 1604. SUBDIVISION TO CONFORM TO PLAN OF WASHINGTON.—No subdivision of land in the District of Columbia without the limits

of the city of Washington shall be recorded in the office of the surveyor or in the office of the recorder of deeds unless the same shall have been first approved by the Commissioners of the District of Columbia and be in conformity with the recorded plans for a permanent system of highways.

SEC. 1605. CHANGING OF ALLEYWAYS.—That whenever all the owners of an entire square, or all the owners of a part of a square bounded on all sides by public streets, in the District of Columbia, shall present to the Commissioners of the District of Columbia a petition asking that any alley or alleys within said square or part of square may be closed wholly or partially, and shall in said petition offer to dedicate for public use, and shall so dedicate if in the opinion of the Commissioners of said District such dedication is necessary, as alleyways ground owned by the petitioners in amount equal at least in area to that of the alleyway sought to be closed, and shall also present to said Commissioners with said petition a correct plat of said square or part of square signed by all of the owners thereof, upon which shall be accurately delineated the positions and dimensions of the existing alley way or ways and a subdivision of the entire area of the alley or alleys sought to be closed into parcels, according to an agreement of all said owners for the future ownership of the same, the name of the agreed future owner of each parcel being marked thereon, and showing also the position and dimensions of the new alley way or ways proposed to be substituted therefor, it shall be the duty of said Commissioners, upon being satisfied of the truth of the facts stated in the petition as to ownership and of correctness of the plat, and also that the proposed change will not be detrimental to the public convenience, to make an order declaring the existing alley way or ways closed, as prayed for, and opening the new alley way or ways proposed to be substituted therefor.

SEC. 1606. That the Commissioners shall cause a certified copy of the order to be attached to the plat and *filed* for record with the recorder of deeds of the District and also in the office of the surveyor of the District, each of whom shall record the same, and thereafter the right of the public to use the alley way or ways declared closed and the proprietary interest of the United States therein shall forever cease and determine, and the title to the same shall be vested according to the agreement of the owners as shown in the aforesaid plat, each person being thenceforward the owner in fee simple of the parcel or parcels upon which his name shall be marked as provided in the foregoing section. The new alley way or ways described in said order and delineated on said plat shall thereafter be and remain dedicated to public use as alleyways, and, like other alleys of said city, shall be under the care and control of the city authorities.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 545).

SEC. 1607. OBLITERATING SUBDIVISIONS AND ALLEYS.—Whenever the title in fee simple to an entire square is vested in one person or in tenants in common, or partners, and such owner or owners desire to improve said square by the erection of a building thereon, covering not less than two-thirds of the area thereof, or for the purpose of some business enterprise, the Commissioners of the District may, on the petition of such owner or owners, setting forth such ownership,

the purpose for which it is desired to use such square, and the manner and the time in which it is proposed to improve the same, on being satisfied of the truth of the facts stated in the petition, and also that the proposed change and use will not be detrimental to the public interests, make an order canceling any previous subdivision of said square and obliterating all alleys therein. They shall cause a certified copy of such order to be *filed* for record with the recorder of deeds, and also the surveyor of the District, each of whom shall record the same. *The expense of the recording provided for by this and the preceding section shall be advanced by the petitioner to the Commissioners under such regulations as they may prescribe.*

Act of June 30, 1902 (32 Stat. L. pt 1., p. 545).

SEC. 1608. That the Commissioners of the District of Columbia be, and they are hereby, authorized to open, extend, widen or straighten alleys and minor streets in the District of Columbia under the following conditions, namely: First, upon the petition of the owners of more than one-half of the real estate in the square or blocks in which such alley or minor street is sought to be opened, extended, widened, or straightened, accompanied by a plat showing the opening, extension, widening, or straightening proposed; second, when the Commissioners deem that the public interests require such opening, extension, widening, or straightening; third, when the health officer of said District certifies to the necessity for the same on the grounds of public health: *Provided*, That a minor street shall be of a width of not less than forty feet nor more than sixty feet and shall run through a square or block from one street to another.

Act of Feb. 23, 1905 (33 Stat. L. pt. 1, p. 733) repealing 31 Stat. L. pt. 1, p. 1189).

Newman v. Newman, 42 App. D. C. 588 (1915); 43 W. L. R. 37.

Fay v. Macfarland, 32 App. D. C. 295 (1908); 37 W. L. R. 30.

Brandenberg v. D. C., 205 U. S. 135, reversing 26 App. D. C. 140.

SEC. 1608a. That if in the opening, extension, widening or straightening of an alley or minor street, or in the extension or widening of public streets or highways, an alley or part of an alley may have been, or may hereafter be, in the judgment of the said Commissioners rendered useless or unnecessary, said Commissioners are authorized to close the same. That if the alley to be closed is an original alley, they may sell the land contained therein for cash at a price not less than the assessed value of contiguous lots. That if the alley is not an original alley, the title thereto shall revert to the owners of the land abutting thereon, but all such land shall be subject to the assessment for benefits hereinafter referred to.

Interpolated by Act of Feb. 23, 1905 (33 Stat. L. pt. 1, p. 733).

SEC. 1608b. That the said Commissioners are authorized to accept the dedication of an alley or alleys and in connection therewith to close any existing alley or alleys in the square or block in which such dedication is made upon the application of the owners of all the property abutting on such existing alley or alleys. That if the alley proposed to be closed is an original alley, the party or parties making the dedication and the parties applying for the closing of the alley or alleys shall present with such application a mutual agreement in writing and under seal, in duplicate, as to the future owner-

ship of the land contained in the alley or alleys to be closed, together with two plats showing the alley or alleys divided into parcels, with the name of the future owner marked on each parcel, in accordance with such agreement. That copies of the order of the Commissioners accepting the dedication and closing the original or subdivisional alley, together with the said agreements and plats in the case of an original alley, shall be forwarded by said Commissioners to the surveyor and recorder of deeds of the District of Columbia for record, and thereafter the title to the land in such subdivisional alley shall revert to the owners of the land abutting thereon, and the title to the land in the original alley shall vest in the parties whose names appear on said plat in accordance with said agreement.

Interpolated by act of Feb. 23, 1905 (33 Stat. L. pt. 1, p. 733).

SEC. 1608c. That the Commissioners are authorized to close any alley or part of alley the width of which is less than ten feet upon the application in writing of the owners of all the abutting property. If the title to such closed alley is in the United States, the land shall be sold, as provided in section sixteen hundred and eight a hereof; and if the title is not in the United States, the land shall revert as provided in said section.

Interpolated by act of Feb. 23, 1905 (33 Stat. L. pt. 1, p. 734).

SEC. 1608d. That whenever the title in fee simple to an entire square is vested in one person or tenants in common or partners, and such owner or owners desire to improve said square by the erection thereon of a building covering not less than two-thirds of the area thereof, or to use said square for the purpose of some business enterprise, the Commissioners are authorized, in their discretion, to order any alley or alleys in such square to be closed, and a copy of said order shall be filed with the surveyor and recorder of deeds of said District for record.

Interpolated by act of Feb. 23, 1905 (33 Stat. L. pt. 1, p. 734).

SEC. 1608e. That whenever it becomes necessary to open, widen, extend, or straighten alleys or minor streets by condemnation the said Commissioners shall institute condemnation proceedings in the supreme court of the District of Columbia, sitting as a district court, by a petition in rem particularly describing the land to be taken, which petition shall be accompanied by duplicate plats to be prepared by the surveyor of said District, showing the courses and boundaries of the alley or minor street proposed to be opened, widened, extended, or straightened, the number of square feet to be taken from each lot or part of lot in the square or block, showing the existing alleys or minor street in said square or block, and such other information as may be necessary for the purposes of such condemnation. Upon the filing of such petition, one copy of the plat, indorsed with the docket number of the case, shall be returned by the clerk of said court to the said surveyor for record in his office.

Interpolated by act of Feb. 23, 1905 (33 Stat. L. pt. 1, p. 734).

SEC. 1608f. That the said court shall cause public notice of not less than ten days to be given of the filing of said proceedings, by advertisement in such manner as the court shall prescribe, which



notice shall warn all persons having any interest in the proceedings to attend court at a day to be named in said notice and to continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and assessment of benefits of the jury; and, in addition to such public notice, said court, whenever in its judgment it is practicable to do so, shall cause a copy of said notice to be served by the United States marshal for the District of Columbia, or his deputies, upon such owners of the fee of the land to be condemned as may be found by said marshal or his deputies within the District of Columbia.

Interpolated by act of Feb. 23, 1905 (33 Stat. L. pt. 1, p. 734).

SEC. 1608g. That after the return of the marshal and the filing of proof of publication of the notice provided for in the preceding section, said court shall cause a jury of five judicious, disinterested men, not related to any person interested in the proceedings and not in the service or employment of the District of Columbia or of the United States, to be summoned by the said marshal, to which jurors said court shall administer an oath or affirmation that they are not interested in any manner in the land to be condemned nor in any way related to the parties interested therein, and that they will, without favor or partiality, to the best of their judgment, assess the damages each owner of land taken may sustain by reason of the opening, extension, widening, or straightening of said alley or minor street and the condemnation of lands for the purposes thereof, and assess the benefits resulting therefrom as hereinafter provided. The court, before accepting the jury, shall hear any objections that may be made to any member thereof, and shall have full power to decide upon all such objections, and to excuse any juror or cause any vacancy in the jury, when impaneled, to be filled; and after said jury shall have been organized and shall have viewed the premises, said jury shall proceed to hear and receive such evidence as may be offered or submitted on behalf of the District of Columbia and by any person or persons having any interest in the proceedings for the opening, extension, widening, or straightening of said alley or minor street; but all such hearings shall be in the presence of the court and under its supervision and direction. When the hearing is concluded the jury, or a majority of them, shall return to said court, in writing, its verdict of the amount found to be due and payable as damages sustained by reason of the said opening, extension, widening, or straightening under the provisions hereof, and of the pieces or parcels of land benefited by such opening, extension, widening, or straightening, and the amount of the assessment for such benefits against the same.

Interpolated by act of Feb. 23, 1905 (33 Stat. L. pt. 1, p. 735).

SEC. 1608h. That if a part only of any piece or parcel of ground shall be condemned, the jury, in determining its value, shall not take into consideration any benefits that may accrue to the remainder thereof from such opening, extension, widening, or straightening, but such benefits shall be considered in determining what assessment shall be made on or against such part of such piece or parcel of land as may not be taken as hereinbefore provided.

Interpolated by act of Feb. 23, 1905 (33 Stat. L. pt. 1, p. 735).

SEC. 1608i. That the court shall have power to hear and determine any objections which may be filed to said verdict or award, and to set aside and vacate the same, in whole or in part, when satisfied that it is unjust or unreasonable, and in such event a new jury in the case, having the qualifications hereinbefore mentioned, shall be summoned, who shall proceed to assess the damages or benefits, as the case may be, in respect of the land as to which the verdict may be vacated, as in the case of the first jury: *Provided*, That the exceptions or objections to the verdict and award shall be filed within thirty days after the return of such verdict and award: *And provided further*, That if the court is satisfied that part of the verdict or award should be set aside or vacated, then and in that event, at the election of the said Commissioners, the court shall set aside and vacate the entire verdict or award and a new jury shall be summoned in the case as aforesaid. The verdict of a new jury summoned in accordance with the provisions of this section shall be final, and if the amount of damages assessed by any new jury summoned as aforesaid shall not be greater, or if the assessment of benefits shall not be less, than the amount assessed by the jury first summoned, according as the objection to the verdict may have been to the assessment of damages or benefits, the costs of the new jury shall be assessed against the property of the party or parties objecting, but if the party or parties should prevail by the verdict of the new jury, either in increasing his or their damages, or in diminishing the assessment for benefits, then, and in that event, the costs of the new jury shall be paid by the District of Columbia, and if the Commissioners of the District of Columbia do not elect that the entire verdict shall be set aside, and the same be set aside or vacated in part, the residue of the verdict and award shall not be affected thereby.

Interpolated by act of Feb. 23, 1905 (33 Stat. L. pt. 1, p. 735).

SEC. 1608j. That said jury shall assess as benefits accruing by reason of said opening, extension, widening, or straightening an amount equal to the amount of damages as ascertained by them as hereinbefore provided, including five dollars per day for the marshal and five dollars per day for each juror for the services of each when actually employed, and all other expenses of such proceedings upon each lot or part of lot or parcel of land in the square or block in which such alley or minor street is to be opened, extended, widened, or straightened, and upon each lot, part of lot, or parcel of ground in the squares or blocks confronting the square in which such alley or minor street is to be opened, extended, widened, or straightened, which will be benefited by such opening, extension, widening, or straightening, in the proportion that said jury may find said lots, parts of lots, or parcels of land will be benefited.

Interpolated by act of Feb. 23, 1905 (33 Stat. L. pt. 1, p. 736).

Newman v. Newman, 42 App. D. C. 588 (1915) ; 43 W. L. R. 37.

King v. Rudolph, 35 App. D. C. 558 (1910) ; 38 W. L. R. 763.

SEC. 1608k. That when the verdict of said jury shall have been finally ratified and confirmed by the court, as herein provided, the amounts of money awarded and adjudged to be payable for lands taken under the provisions hereof shall be paid to the owners of said land by the Treasurer of the United States, ex officio commissioner

of the sinking fund of the District of Columbia, upon the warrants of the Commissioners of said District, out of any funds available therefor: *Provided*, That in all cases of payments the accounting officers shall take into account the assessment for benefits and the award for damages, and shall pay only such part of said award in respect of any lot as may be in excess of the assessment for benefits against the part of such lot not taken, and there shall be credited on said assessment the amount of said award not in excess of said assessment.

Interpolated by act of Feb. 23, 1905 (33 Stat. L. pt. 1, p. 736).

SEC. 1608l. That when confirmed by the court the several assessments herein provided to be made shall severally be a lien upon the land assessed and shall be collected as special-improvement taxes in the District of Columbia, and shall be payable in four equal annual installments, with interest at the rate of four per centum per annum from and after sixty days after the date of confirmation until paid. That said court may allow amendments in form or substance in any description of property proposed to be taken, or of property assessed for benefits, whenever such amendments will not interfere with the substantial rights of the parties interested, and any such amendment may be made after as well as before the order or judgment confirming the verdict or award aforesaid.

Interpolated by act of Feb. 23, 1905 (33 Stat. L. pt. 1, p. 736).

SEC. 1609. That each juror shall receive as compensation the sum of five dollars per day for his services during the time he shall be actually engaged in such services under the provisions hereof.

Act of Feb. 23, 1905 (33 Stat. L. pt. 1, p. 736), repealing 31 Stat. L. pt. 1, p. 1189.

SEC. 1610. That no appeal by any interested party from the decision of the supreme court of the District of Columbia confirming the assessment or assessments of benefits or damages herein provided for, nor any other proceeding at law or in equity by such party against the confirmation of such assessment or assessments, shall delay or prevent the payment of award to others in respect to the property condemned, nor delay or prevent the taking of any of said property sought to be condemned, nor the opening, extension, widening, or straightening of such alley or minor street: *Provided, however*, That upon the final determination of said appeal or other proceeding at law or in equity, the amount found to be due and payable as damages sustained by reason of the opening, extension, widening, or straightening of said alley or minor street under the provisions hereof shall be paid as hereinbefore provided.

Act of Feb. 23, 1905 (33 Stat. L. pt. 1, p. 736), repealing 31 Stat. L. pt. 1, p. 1189.

SEC. 1611. That all money derived from the sale of land in which the United States is interested, under the provisions of this Act, shall be paid into the Treasury of the United States by the Commissioners of the District of Columbia to the credit of the United States.

Act of Feb. 23, 1905 (33 Stat. L. pt. 1, p. 736), repealing 31 Stat. L. pt. 1, p. 1189.

SEC. 1612. That in all cases where plats are required to be made under the provisions of this Act, or where the said Commissioners shall deem it necessary that they shall be made in order to more effectually carry out any provision hereof, such plats shall be made by the surveyor of the District of Columbia, who shall require the person or persons desiring the same to deposit in advance a sum to defray the cost of preparing the same; any amount of such deposit remaining after the cost of such plats has been paid shall be refunded to the party so depositing: *Provided*, That plats ordered by the said Commissioners shall be prepared by said surveyor free of cost.

Act of Feb. 23, 1905 (33 Stat. L. pt. 1, p. 737), repealing 31 Stat. L. pt. 1, p. 1189.

SEC. 1613. That the validity of any condemnation proceeding under the Act of Congress entitled "An Act to provide for the opening of alleys in the District of Columbia," approved July twenty-second, eighteen hundred and ninety-two, or under the Act of Congress entitled "An Act to open, widen, and extend alleys in the District of Columbia," approved August twenty-fourth, eighteen hundred and ninety-four, or under the sections of the code of law for the District of Columbia hereby repealed, shall not be affected by the want of proper notice to any proprietor of land in the square, except as to such proprietor; and if it shall appear to the satisfaction of the Commissioners of the District of Columbia that any such proprietor was not notified as required by said Acts the said Commissioners may proceed under this Act to condemn the land affected by the want of such notice.

Act of Feb. 23, 1905 (33 Stat. L. pt. 1, p. 737), repealing 31 Stat. L. pt. 1, p. 1189.

SEC. 1614. ALLEYS PREVIOUSLY OPENED, AND SO FORTH.—That all alleys opened or extended in the city of Washington since June thirtieth, eighteen hundred and seventy-one, under an ordinance of the late corporation of Washington approved November fourth, eighteen hundred and forty-two, are hereby made valid: *Provided*, That nothing in this code shall affect the rights of parties to suits now pending in such cases.

SEC. 1615. That all alleys or parts of alleys heretofore closed by subdivision, with the approval of the Commissioners, shall remain unaffected by this code.

SEC. 1616. MONEYS FROM SALE OF LAND.—If any money from the sale of land in which the United States is interested shall remain after carrying out the provisions of the preceding sections of this code, such moneys shall be paid into the Treasury of the United States by the Commissioners of the District of Columbia.

CHAPTER FIFTY-SIX

USES AND TRUSTS

SEC. 1617. THE LEGAL ESTATE TO BE IN CESTUI QUE USE.—Where lands, tenements, or hereditaments are conveyed or devised to one person, whether for years or for a freehold estate, to the use of or in trust for another, no estate or interest, legal or equitable, shall vest in the trustee, but the person entitled, according to the true intent and meaning of such instrument, to the actual possession of the property and the receipt of the rents and profits thereof, in law or in equity, shall be deemed to have a legal estate therein of the same quality and duration and subject to the same conditions as his beneficial interest, except where the title of such trustee is not merely nominal but is connected with some power of actual disposition or management of the property conveyed.

See section 492.

Slater v. Rudderforth, 25 App. D. C. 497 (1905) ; 33 W. L. R. 424.

SEC. 1618. PURCHASER FOR VALUE.—No implied or resulting trust shall be alleged or established to defeat or prejudice the title of a purchaser for a valuable consideration and without notice of such trust; and where an express trust is created, but is not contained or declared in the conveyance to the trustee, such conveyance shall be deemed absolute in favor of purchasers from the trustee for value and without notice of the trust.

Act of 27 Hen. 8, ch. 10, sec. 1, Comp. Stat. D. C. pp. 536, secs. 1 et seq.

CHAPTER FIFTY-SEVEN

WAREHOUSEMEN

SEC. 1619. LIEN OF WAREHOUSEMEN.—Every person, firm, association, or corporation lawfully engaged in the business of storing goods, wares, merchandise, or personal property of any description shall have a lien first, except for taxes thereon, for the agreed charges for storing the same and for all moneys advanced for freight, cartage, labor, insurance, and other necessary expenses thereon. Said lien for such unpaid charges, upon at least one year's storage and for the aforesaid advances in connection therewith, may be enforced by sale at public auction, after thirty days' notice in writing mailed to the last known address of the person or persons in whose name or names the said property so in default was stored, and said notice shall also be published for six days in a daily newspaper in the District of Columbia. And after deducting all storage charges, advances, and expenses of sale, any balance arising therefrom shall be paid by the bailee to the bailor of such goods, wares, merchandise, or personal property, his assigns or legal representatives.

See Uniform Warehouse Receipt Law, Appendix, p. 527.

Failure to observe statutory requirements for enforcing lien renders sale absolutely void. *Baum v. Wm. Knabe & Co. Mfg. Co.*, 33 App. D. C. 237 (1909) ; 37 W. L. R. 276.

SEC. 1620. ASSIGNEE.—Said property may be sold either in bulk or in separate pieces, articles, packages, or parcels, as will in the judgment of the lien holder secure the largest obtainable price: *Provided*, That if the person or persons storing said property shall have assigned or transferred the title thereto and have duly recorded said assignment or transfer upon the books of the storage warehouse, the written notice of sale shall also be mailed to said transferee or assignee.

See annotations to section 1619.

SEC. 1621. WHERE TITLE IN ISSUE.—Whenever the title or right of possession to any goods, wares, merchandise, or personal property on storage shall be put in issue by any judicial proceeding, the same shall be delivered upon the order of the court, after prepayment of the storage charges and cash advances then due by the person at whose instance such change of possession is so ordered, and who shall be entitled to recover such payment as part of the costs in such proceeding, or, if defeated therein, he shall be credited with such payment in taxation of costs against him. And unless the person, firm, association, or corporation so conducting a storage business shall claim some right, title, or interest in said stored property other than the lien hereinabove authorized, he, it, or they shall not be made a party to such judicial proceedings.

See annotations to section 1619.

Wall v. De Mitkiewicz, 9 App. D. C. 109 (1896) ; 24 W. L. R. 408.

CHAPTER FIFTY-EIGHT

WASTE

SEC. 1622. JOINT TENANT OR TENANT IN COMMON AGAINST COTENANT.—Any joint tenant or tenant in common may maintain an action for waste committed by his cotenant, or in a suit for a partition, or a sale for purpose of partition, may have said waste charged against the share of the cotenant committing the same.

See section 1226.

13 Edw. 1, ch. 22, Comp. Stat. D. C., p. 450, sec. 49.

CHAPTER FIFTY-NINE

WILLS

SEC. 1623. WHAT MAY BE DEVISED.—All lands, tenements, and hereditaments, and personal estate which might pass by deed or gift, or which would, in case of the proprietor's dying intestate, descend to or devolve on his or her heirs or other representatives, shall be subject to be disposed of, transferred, and passed by his or her last will, testament, or codicil, under the following restrictions:

Act of Md. of 1798, ch. 101, subch. 1, sec. 1, Comp. Stat. D. C., p. 556, sec. 1.

Mayer v. American Security & Trust Co., 33 App. D. C. 391 (1909) ; 37 W. L. R. 422, affirmed 222 U. S. 295 (devise of equitable estate remaining in grantor, after he has created a naked power in one to convey an estate to another upon the performance of a condition).

Dangerfield v. Williams (see sec. 1265).

Colonna v. Alton, 23 App. D. C. 296 (1904) ; 32 W. L. R. 165.

Kennedy v. Alexander, 21 App. D. C. 424 (1903) ; 31 W. L. R. 158.

Reeves v. Low, 8 App. D. C. 105 (1896), 24 W. L. R. 113.

[SEC. 1624. PERPETUITIES.—No will, testament, or codicil shall be effectual to create any interest in perpetuity, or make any limitation, or appoint any uses, except as permitted by this code.]

Repealed by act of June 30, 1902 (32 Stat. L. pt. 1, p. 545.)

SEC. 1625. WHO CAPABLE OF MAKING WILL.—No will, testament, or codicil shall be good and effectual for any purpose whatever unless the person making the same be, if a male, of the full age of twenty-one years, and if a female, of the full age of eighteen years, and be at the time of executing or acknowledging it, as hereinafter directed, of sound and disposing mind and capable of executing a valid deed or contract.

Act of Md. of 1798, ch. 101, subch. 1, sec. 3, Comp. Stat. D. C. p. 557, sec. 3.

Insane delusions, *Morgan v. Morgan*, 30 App. D. C. 436 (1908) ; 36 W. L. R. 134. *Turner v. American Security & Trust Co.*, 29 App. D. C. 460 (1907) ; 35 W. L. R. 302, affirmed 213 U. S. 257. *Riddle v. Gibson*, 29 App. D. C. 237 (1907) ; 35 W. L. R. 143.

Mental capacity, *Morgan v. Adams*, 29 App. D. C. 198 (1907) ; 35 W. L. R. 190, dismissed 211 U. S. 627. *Kelly v. Moore*, 22 App. D. C. 9 (1903) ; 31 W. L. R. 339, affirmed 196 U. S. 38.

Will of illiterate person, *Lipphard v. Humphrey*, 28 App. D. C. 355 (1906) ; 34 W. L. R. 788, affirmed in 209 U. S. 264.

Fraud and undue influence, *Robinson v. Duvall*, 27 App. D. C. 535 (1906) ; 34 W. L. R. 446, affirmed 207 U. S. 583.

See also: *National Safe Deposit, etc., Co. v. Heiberger*, 19 D. C. 506 (1902) ; 30 W. L. R. 309. *Manogue v. Herrell*, 13 App. D. C. 455 (1898) ; 26 W. L. R. 775. *Barbour v. Moore*, 4 App. D. C. 535 (1894) ; 22 W. L. R. 792.

SEC. 1626. FORM OF WILL AND REVOCATION.—All wills and testaments shall be in writing and signed by the testator, or by some other person in his presence and by his express directions, and shall be attested and subscribed in the presence of the said testator by at least two credible witnesses, or else they shall be utterly void and of no effect; and, moreover, no devise or bequest, or any clause thereof,

shall be revocable otherwise than by some other will or codicil in writing or other writing declaring the same, or by burning, canceling, tearing, or obliterating the same by the testator himself or in his presence and by his direction and consent; but all devises and bequests shall remain and continue in force until the same be burned, canceled, torn, or obliterated by the testator or by his direction in the manner aforesaid, or unless the same be altered or revoked by some other will, testament, or codicil in writing, or other writing of the testator signed in the presence of at least two witnesses attesting the same, any former law or usage to the contrary notwithstanding.

Act of Md. of 1798, ch. 101, subch. 1, sec. 4, Comp. Stat. D. C., p. 557, sec. 4.

Subsequent marriage of testatrix and birth of issue does not revoke will. *Morris v. Foster*, 51 App. D. C. 239 (1922); 50 W. L. R. 178.

The reexecution of a will requires the same formalities as required for its original execution. *Notes v. Doyle*, 32 App. D. C. 413 (1909); 37 W. L. R. 63. Attesting witnesses need not know the contents of the document; "they may attest it without the presence of each other; they, or any of them, need not see the testator sign the will, provided he acknowledge the signature to each of the witnesses; and they need not even know that the document they have witnessed is a will." *Ib.*

As to attestation in the presence of the testator, see opinion of William Clark Taylor, Esq., Referee, in *In re: Estate of Rosalie M. Sessford*, deceased, 50 W. L. R. 790 (1922).

Revocation of will by subsequent deed, see *McGowan v. Elroy*, 28 App. D. C. 188 (1906); 34 W. L. R. 782.

See also *Colonna v. Alton*, 23 App. D. C. 296 (1904), 32 W. L. R. 165; *Keely v. Moore*, 196 U. S. 38; *Cruit v. Owen*, 21 App. D. C. 378 (1903), 31 W. L. R. 222; *Chapman v. Dismar*, 14 App. D. C. 446 (1899), 27 W. L. R. 238; *Throckmorton v. Holt*, 180 U. S. 552, reversing 12 App. D. C. 552; *Vestry of St. John's Parish v. Bostwick*, 8 App. D. C. 452 (1896), 24 W. L. R. 310 (incorporation by reference).

SEC. 1627. REVIVAL OF WILL AFTER REVOCATION.—No will or codicil, or any part thereof, which shall be in any manner revoked shall, after being revoked, be revived otherwise than by the reexecution thereof, or by a codicil executed in the manner hereinbefore required, and then only to the extent to which an intention to revive is shown.

SEC. 1628. AFTER-ACQUIRED REAL ESTATE.—Any will executed after January seventeenth, eighteen hundred and eighty-seven, and before the first day of January, nineteen hundred and two, devising real estate, from which it shall appear that it was the intention of the testator to devise property acquired after the execution of the will, shall be deemed, taken, and held to operate as a valid devise of all such property; and any will hereafter executed which shall by words of general import devise all the estate or all the real estate of the testator shall be deemed, taken, and held to operate as a valid devise of any real estate acquired by said testator after the execution of such will, unless it shall appear therefrom that it was not the intention of the testator to devise such after-acquired property.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 545), repealing 31 Stat. L. pt. 1, p. 1189.

See also act of Jan. 17, 1887 (24 Stat. L. p. 361), Comp. Stat. D. C. p. 558, sec. 9.

Taylor v. Leesnitzer, 37 App. D. C. 356 (1911), 39 W. L. R. 370, reviewing the prior legislation on the subject and overruling *McAler v. Schneider*, 2 App. D. C. 461, 22 W. L. R. 193; *Bradford v. Matthews*, 9 App. D. C. 438, 34 W. L. R. 762; *Crenshaw v. McCormick*, 19 App. D. C. 494, 30 W. L. R. 239.

SEC. 1629. POWERS.—No appointment made by will in the exercise of a power shall be valid unless the same be so executed that it would

be valid for the disposition of the property to which the power applies if it belonged to the testator.

See section 1633.

SEC. 1630. SATISFACTION OF LEGACY.—A provision for or advancement to any person shall be deemed a satisfaction, in whole or in part of a devise or bequest to such person contained in a previous will if it would be so deemed in case the devisee or legatee were the child of the testator; and, whether he be a child or not, it shall be so deemed in all cases in which it shall appear from parol or other evidence to be so intended.

See section 959.

Miller v. Payne, 28 App. D. C. 396 (1906); 34 W. L. R. 798.

Patten v. Glover, 1 App. D. C. 466 (1893); 21 W. L. R. 794, affirmed in 165 U. S. 394.

SEC. 1631. LAPSED OR VOID DEVISES.—If a devisee or legatee die before the testator, leaving issue who survive the testator, such issue shall take the estate devised or bequeathed as the devisee or legatee would have done if he had survived the testator, unless a different disposition be made or required by the will. Unless a contrary intention appear by the will, such property as shall be comprised in any devise or bequest in such will which shall fail or be void or otherwise incapable of taking effect shall be deemed included in the residuary devise or bequest, if any, contained in such will.

Washington Loan & Trust Co. v. Hammond, 51 App. D. C. 260 (1922); 50 W. L. R. 146.

SEC. 1632. LEASEHOLDS.—A devise of the land of a testator, or of his land in any place, or in the occupation of a person named or otherwise described in a general manner, shall be construed to include his leasehold estates or any of them to which such descriptions shall extend, as well as freehold estates, unless a contrary intention shall appear by the will.

SEC. 1633. GENERAL DEVISE OF ALL PROPERTY.—Every devise and bequest purporting to be of all real or personal property, or both, belonging to the testator shall be construed to include also all property of either or both kinds, respectively, over which he has a general power of appointment, unless the contrary intention shall appear in the will or codicil containing such devise or bequest.

Act of June 30, 1902 (32 Stat L. pt. 1, p. 545), repealing 31 Stat L. pt. 1, p. 1189.

SEC. 1634. NUNCUPATIVE WILLS.—No nuncupative will hereafter made shall be valid in the District; but any soldier being in actual military service, or mariner being at sea, may dispose of his movables, wages, and personal estate by word of mouth: *Provided*, That such disposition shall be proved by at least two witnesses who were present at the making thereof and were requested by the testator to bear witness that such was his last will, nor unless such will were made in the time of the last sickness of the deceased, and the substance thereof reduced to writing within ten days after the making thereof.

Act of 29 Car. 2, ch. 3, sec. 19, Comp. Stat. D. C., p. 562, sec. 29.

SEC. 1635. BEQUESTS FOR RELIGIOUS PURPOSES.—No devise or bequest of lands, or goods, or chattels to any minister, public teacher, or preacher of the gospel, as such, or to any religious sect, order, or denomination, or to or for the support, use, or benefit of or in trust for any minister, public teacher, or preacher of the gospel, as such, or any religious sect, order, or denomination, shall be valid unless the same shall be made at least one calendar month before the death of the testator.

See section 1023.

R. S. D. C., sec. 457, Comp. Stat. D. C., p. 493, sec. 20.

Colbert v. Speer, 24 App. D. C. 187 (1904) ; 31 W. L. R. 630 ; affirmed in 200 U. S. 130.

Horn v. Foley, 13 App. D. C. 184 (1898) ; 26 W. L. R. 466.

SEC. 1635a. It shall be lawful for any person in whose possession or custody a will or codicil shall be after the death of the testator or testatrix, to open and read the same in the presence of any near relatives of the deceased, who may conveniently have notice thereof, and of other persons, and immediately thereafter to deliver such will or codicil to the supreme court of the District of Columbia, holding a special term as a probate court, or to the register of wills, until due proceedings may be had for proving the same, or until it be demanded by an executor or other person authorized to demand it, for the purpose of having it proved according to law.

Interpolated by Act of June 30, 1902 (32 Stat. L. pt. 1, p. 545).

See section 830.

Act of Md. of 1798, ch. 101, subch. 2, sec. 2, Comp. Stat. D. C., p. 559, sec. 15.

"While the statutes regulating the probate of wills provides no time within which probate shall be applied for, yet they contemplate that this shall be speedily done (citing sec. 1635a)." McGowan v. Elroy, 28 App. D. C. 188 (1906) ; 34 W. L. R. 782.

CHAPTER SIXTY

REPEAL PROVISIONS

SEC. 1636. All acts and parts of acts of the general assembly of the State of Maryland general and permanent in their nature, all like acts and part of acts of the legislative assembly of the District of Columbia, and all like acts and parts of acts of Congress applying solely to the District of Columbia in force in said District on the day of the passage of this act are hereby repealed, except:

First. Acts and parts of acts relating to the rights, powers, duties, or obligations of the United States.

Second. Acts and parts of acts relating to the Court of Claims.

Third. Acts and parts of acts relating to the organization of the District government, or to its obligations, or the powers or duties of the Commissioners of the District of Columbia, or their subordinates or employees, or to police regulations, and generally all acts and parts of acts relating to municipal affairs only, including those regulating the charges of public-service corporations.

Fourth. Acts and parts of acts relating to the militia.

Fifth. All penal statutes authorizing punishment by fine only or by imprisonment not exceeding one year, or both.

Sixth. Acts and parts of acts of Congress relating solely to the Departments of the General Government in the District of Columbia, or any of them.

Seventh. Acts or parts of acts authorizing, defining, and prescribing the organization, powers, duties, fees, and emoluments of the register of wills of the District of Columbia and his office.

Eighth. An act to regulate the practice of pharmacy in the District of Columbia, approved June fifteenth, eighteen hundred and seventy-eight; an act for the regulation of the practice of dentistry in the District of Columbia, and for the protection of the people from empiricism in relation thereto, approved June sixth, eighteen hundred and ninety-two; an act regulating the construction of buildings along alleyways in the District of Columbia, approved July twenty-second, eighteen hundred and ninety-two; an act for the promotion of anatomical science, and to prevent the desecration of graves in the District of Columbia, approved February twenty-sixth, eighteen hundred and ninety-five; an act to provide for the incorporation and regulation of medical and dental colleges in the District of Columbia, approved May fourth, eighteen hundred and ninety-six; an act relating to the testimony of physicians in the courts of the District of Columbia, received by the President May thirteenth, eighteen hundred and ninety-six; an act to regulate the practice of medicine and surgery, to license physicians and surgeons, and to punish persons violating the provisions thereof in the District of Columbia, approved June third, eighteen hundred and ninety-six; and, generally,

all acts or parts of acts relating to medicine, dentistry, pharmacy, the commitment of the insane to the Government Hospital for the Insane in the District of Columbia, the abatement of nuisances, and public health.

Ninth. Acts and parts of acts relating to the organization and powers of vestries, trustees, or other governing bodies of any religious denomination.

All acts and parts of acts included in the foregoing exceptions, or any of them, shall remain in force except in so far as the same are inconsistent with or are replaced by the provisions of this code.

Act of June 30, 1902 (32 Stat. L. pt. 1, p. 546).

W. B. Moses & Sons v. Hayes, 36 App. D. C. 194 (1911) ; 39 W. L. R. 39.

Act of legislative assembly, D. C., of Aug. 23, 1871, for prevention of cruelty to animals is not repealed by section 1636, as "that section expressly saves from repeal all acts of the legislative assembly of the District of Columbia relating to 'police regulations.'" Johnson v. D. C., 30 App. D. C. 520 (1908) ; 36 W. L. R. 173.

Costello v. Palmer, 20 App. D. C. 210 (1902) ; 30 W. L. R. 402.

Clark v. U. S., 19 App. D. C. 295 (1902) ; 30 W. L. R. 70.

SEC. 1637. The incorporation into this code of any general and permanent provision taken from an act making appropriations, or from an act containing other provisions of a private or temporary character, shall not repeal nor in any way affect any appropriation or any provision of a private or temporary character contained in any of said acts, but the same shall remain in force.

See annotations to section 1636.

SEC. 1638. The repeal by the preceding section of any statute, in whole or in part, shall not affect any act done or any right accruing or accrued or any suit or proceeding had or commenced in any civil cause before such repeal, but all rights and liabilities under the statutes or parts thereof so repealed shall continue and may be enforced in the same manner as if such repeal had not been made: *Provided*, That the provisions of this code relating to procedure or practice and not affecting the substantial rights of parties shall apply to pending suits or proceedings civil or criminal.

Cohen v. Cohen, 47 App. D. C. 129 (1917) ; 45 W. L. R. 802.

Green v. McIntire, 42 App. D. C. 250 (1914) ; 42 W. L. R. 403.

Johnson v. U. S., 38 App. D. C. 347 (1912) ; 40 W. L. R. 178, affirmed in 225 U. S. 405.

Welch v. Lynch, 30 App. D. C. 122 (1907) ; 35 W. L. R. 398.

Young v. Norris Peters Co., 27 App. D. C. 140 (1906) ; 34 W. L. R. 240.

McKay v. Bradley, 26 App. D. C. 449 (1906) ; 34 W. L. R. 33.

Shelley v. Wescott, 23 App. D. C. 135 (1904) ; 32 W. L. R. 68.

Gwin v. Brown, 21 App. D. C. 295 (1903) ; 31 W. L. R. 238.

Dabney v. Dabney, 20 App. D. C. 440 (1902) ; 30 W. L. R. 727.

SEC. 1639. The enactment of this code is not to affect or repeal any act of Congress which may be passed between the date of this act and the date when this act is to go into effect; and all acts of Congress that may be passed hereafter are to have full effect as if passed after the enactment of this code, and, so far as such acts may vary from or conflict with any provision contained in this code, they are to have effect as subsequent statutes and as repealing any portion of this act inconsistent therewith.

Johnson v. U. S., 38 App. D. C. 347, affirmed in 225 U. S. 405.

SEC. 1640. Nothing in the repealing clause of this code contained shall be held to affect the operation or enforcement in the District of Columbia of the common law or of any British statute in force in Maryland on the twenty-seventh day of February, eighteen hundred and one, or of the principles of equity or admiralty, or of any general statute of the United States not locally inapplicable in the District of Columbia or by its terms applicable to the District of Columbia and to other places under the jurisdiction of the United States, or of any municipal ordinance or regulation, except in so far as the same may be inconsistent with, or is replaced by, some provision of this code.

Johnson v. U. S., *supra*.

Lesh v. Lesh, 21 App. D. C. 475 (1903) ; 31 W. L. R. 288.

Gwin v. Brown, 21 App. D. C. 295 (1903) ; 31 W. L. R. 238.

SEC. 1641. All offenses committed and all penalties or forfeitures incurred in the District prior to the date on which this code is to take effect may be prosecuted and punished in the same manner and with the same effect as if this code had not been enacted.

SEC. 1642. Where any action or proceeding by the provisions of chapter forty-one of this code would be barred at the time it goes into effect, or within one year thereafter, which would not be so barred by prior laws, such action or proceeding may be brought or instituted within such period of one year, anything in said chapter to the contrary notwithstanding.

SEC. 1643. That nothing herein contained shall be held to affect the term of office of any judicial or other officer holding office when this code goes into effect and operation, except when, as in the case of the present justices of the peace and constables, a contrary intention is manifested.

Interpolated by Act of June 30, 1902 (32 Stat. L. pt. 1, p. 546).

APPENDIX

APPENDIX C

RED LIGHT LAW

An Act To enjoin and abate houses of lewdness, assignation, and prostitution; to declare the same to be nuisances; to enjoin the person or persons who conduct or maintain the same and the owner or agent of any building used for such purpose; and to assess a tax against the person maintaining said nuisance and against the building and owner thereof

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whoever shall erect, establish, continue, maintain, use, own, occupy, or release any building, erection, or place used for the purpose of lewdness, assignation, or prostitution in the District of Columbia is guilty of a nuisance, and the building, erection, or place, or the ground itself in or upon which such lewdness, assignation, or prostitution is conducted, permitted, or carried on, continued, or exists, and the furniture, fixtures, musical instruments, and contents are also declared a nuisance, and shall be enjoined and abated as hereinafter provided.

SEC. 2. That whenever a nuisance is kept, maintained, or exists as defined in this Act the attorney of the United States for the District of Columbia, or the Attorney General of the United States, or any citizen of the District of Columbia, may maintain an action in equity in the name of the United States of America, upon the relation of such attorney of the United States for the District of Columbia, the Attorney General of the United States, or citizen, to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same, and the owner or agent of the building or ground upon which said nuisance exists. In such action the court, or a judge in vacation, shall, upon the presentation of a petition therefor alleging that the nuisance complained of exists, allow a temporary writ of injunction, without bond, if it shall be made to appear to the satisfaction of the court or judge by evidence in the form of affidavits, depositions, oral testimony, or otherwise, as the complainant may elect, unless the court or judge by previous order shall have directed the form and manner in which it shall be presented. Three days' notice, in writing, shall be given the defendant of the hearing of the application, and if then continued at his instance the writ as prayed shall be granted as a matter of course. When an injunction has been granted it shall be binding on the defendant throughout the District of Columbia, and any violation of the provisions of injunction herein provided shall be a contempt as hereinafter provided.

SEC. 3. That the action when brought shall be triable at the first term of court, after due and timely service of the notice has been

given, and in such action evidence of the general reputation of the place shall be admissible for the purpose of proving the existence of said nuisance. If the complaint is filed by a citizen, it shall not be dismissed, except upon a sworn statement made by the complainant and his attorney, setting forth the reasons why the action should be dismissed, and the dismissal approved by the attorney of the United States for the District of Columbia or the Attorney General of the United States of America in writing or in open court. If the court is of the opinion that the action ought not to be dismissed, it may direct the attorney of the United States for the District of Columbia to prosecute said action to judgment; and if the action is continued more than one term of court, any citizen of the District of Columbia, or the attorney of the United States for the District of Columbia, may be substituted for the complaining party and prosecute said action to judgment. If the action is brought by a citizen, and the court finds there was no reasonable ground or cause for said action, the costs may be taxed to such citizen.

SEC. 4. That in case of the violation of any injunction granted under the provisions of this Act, the court, or, in vacation, a judge thereof, may summarily try and punish the offender. The proceedings shall be commenced by filing with the clerk of the court an information, under oath, setting out the alleged facts constituting such violation, upon which the court or judge shall cause a warrant to issue, under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may at any stage of the proceedings demand the production and oral examination of the witnesses. A party found guilty of contempt, under the provisions of this section, shall be punished by a fine of not less than \$200 nor more than \$1,000 or by imprisonment in the District jail not less than three nor more than six months or by both fine and imprisonment.

SEC. 5. That if the existence of the nuisance be established in an action as provided in this Act, or in a criminal proceeding, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments, or movable property used in conducting the nuisance, and shall direct the sale thereof in the manner provided for the sale of chattels under execution, and the effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released. If any person shall break and enter or use a building, erection, or place so directed to be closed he shall be punished as for contempt, as provided in the preceding section.

SEC. 6. That the proceeds of the sale of the personal property, as provided in the preceding section, shall be applied in the payment of the costs of the action and abatement, and the balance, if any, shall be paid to the defendant.

SEC. 7. That if the owner appears and pays all costs of the proceeding and files a bond, with sureties to be approved by the clerk, in the full value of the property, to be ascertained by the court or, in vacation, by the collector of taxes of the District of Columbia, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept within a period of one year

thereafter, the court, or, in vacation, the judge, may, if satisfied of his good faith, order the premises closed under the order of abatement to be delivered to said owner and said order of abatement canceled so far as the same may relate to said property; and if the proceeding be an action in equity and said bond be given and costs therein paid before judgment and order of abatement, the action shall be thereby abated as to said building only. The release of the property under the provisions of this section shall not release it from judgment, lien, penalty, or liability to which it may be subject by law.

SEC. 8. That whenever a permanent injunction issues against any person for maintaining a nuisance as herein defined, or against any owner or agent of the building kept or used for the purpose prohibited by this Act, there shall be assessed against said building and the ground upon which the same is located and against the person or persons maintaining said nuisance, and the owner or agent of said premises, a tax of \$300. The assessment of said tax shall be made by the assessor of the District of Columbia and shall be made within three months from the date of the granting of the permanent injunction. In case the assessor fails or neglects to make said assessment the same shall be made by the chief of police, and a return of said assessment shall be made to the collector of taxes. Said tax shall be a perpetual lien upon all property, both personal and real, used for the purpose of maintaining said nuisance, and the payment of said tax shall not relieve the person or building from any other penalties provided by law. The provisions of the law relating to the collection and distribution of taxes upon personal and real property shall govern in the collection and distribution of the tax herein prescribed in so far as the same are applicable and not in conflict with the provisions of this Act.

SEC. 9. The United States district attorney or other attorney representing the prosecution for violation of this statute, with the approval of the court, may grant immunity to any witness called to testify in behalf of the prosecution.

Approved, February 7, 1914 (38 St. L. 280).

SENTENCES OF CONVICTS TO IMPRISONMENT IN JAIL OR REFORMATORY

The act of June 30, 1917 (39 St. L. pt. 1, p. 711), after making an appropriation for the maintenance of the District of Columbia Reformatory, provides as follows:

Provided, That whenever any person has been convicted of crime in any court in the District of Columbia and sentenced to imprisonment for more than one year by the court, the imprisonment during the term for which he may have been sentenced or during the residue of said term may be in some suitable jail or penitentiary or in the reformatory of the District of Columbia, above referred to; and it shall be sufficient for the court to sentence the defendant to imprisonment in the penitentiary without specifying the particular prison or the reformatory of the District of Columbia and the imprisonment shall be in such penitentiary, jail, or the reformatory of the District

of Columbia as the Attorney General shall from time to time designate: *Provided further*, That the commissioners are vested with jurisdiction over such male and female prisoners as may be designated by the Attorney General for confinement in the reformatory of the District of Columbia from the time they are delivered into their custody or into the custody of their authorized superintendent, deputy, or deputies, and until such prisoners are released or discharged under due process of law: *And provided further*, That the residue of the term of imprisonment of any person who has heretofore been convicted of crime in any court in the District of Columbia and sentenced to imprisonment for more than one year by the court may be in the reformatory of the District of Columbia instead of the penitentiary where such persons may be confined when this Act takes effect, and the Attorney General, when so requested by the Commissioners of the District of Columbia, is authorized to, and he shall, deliver into the custody of the superintendent of said reformatory or his deputy or deputies any such person confined in any penitentiary in pursuance of any judgment of conviction in and sentence by any court in the District of Columbia, and the Commissioners of the District of Columbia are vested with jurisdiction over such prisoners from the time they are delivered into the custody of said superintendent or his duly authorized deputy or deputies, including the time when they are in transit between such penitentiary and the reformatory of the District of Columbia, and during the period they are in such reformatory or until they are released or discharged under due process of law. The Attorney General shall pay the cost of the maintenance of said prisoners so transferred, said payment to be from appropriations for support of convicts, District of Columbia, in like manner as payments are now made for the support of District convicts in Federal penitentiaries. Nothing herein contained shall be construed as applying to the National Training School for Boys or the National Training School for Girls. The provisions of this paragraph shall take effect on and after July first, nineteen hundred and sixteen.

FLAG DESECRATION

An Act To prevent and punish the desecration, mutilation, or improper use, within the District of Columbia, of the flag of the United States of America

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter any person who, within the District of Columbia, in any manner, for exhibition or display, shall place or cause to be placed any word, figure, mark, picture, design, drawing or any advertisement of any nature upon any flag, standard, colors or ensign of the United States of America; or shall expose or cause to be exposed to public view any such flag, standard, colors or ensign upon which shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed any word, figure, mark, picture, design or drawing, or any advertisement of any nature; or who, within the District of Columbia, shall manufacture, sell, expose for sale or to public view or give away or have in possession for sale or to be given

away or for use for any purpose, any article or substance being an article of merchandise, or a receptacle for merchandise or article or thing for carrying or transporting merchandise, upon which shall have been printed, painted, attached or otherwise placed a representation of any such flag, standard, colors or ensign, to advertise, call attention to, decorate, mark or distinguish the article or substance on which so placed; or who, within the District of Columbia, shall publicly mutilate, deface, defile or defy, trample upon or cast contempt, either by word or act, upon any such flag, standard, colors or ensign, shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding \$100 or by imprisonment for not more than thirty days, or both, in the discretion of the court. The words "flag, standard, colors, or ensign," as used herein, shall include any flag, standard, colors, ensign or any picture or representation of either, or of any part or parts of either, made of any substance or represented on any substance, of any size evidently purporting to be either of said flag, standard, colors or ensign of the United States of America or a picture or a representation of either, upon which shall be shown the colors, the stars and the stripes, in any number of either thereof, or of any part or parts of either, by which the average person seeing the same without deliberation may believe the same to represent the flag, colors, standard or ensign of the United States of America.

Approved, February 8, 1917 (39 St. L. pt. 1, p. 900).

FRAUDULENT ADVERTISING

An Act To prevent fraudulent advertising in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful in the District of Columbia for any person, firm, association, corporation, or advertising agency, either directly or indirectly, to display or exhibit to the public in any manner whatever, whether by handbill, placard, poster, picture, film, or otherwise; or to insert or cause to be inserted in any newspaper, magazine, or other publication printed in the District of Columbia; or to issue, exhibit, or in any way distribute or disseminate to the public; or to deliver, exhibit, mail or send to any person, firm, association, or corporation any false, untrue, or misleading statement, representation or advertisement with intent to sell, barter, or exchange any goods, wares or merchandise or anything of value or to deceive, mislead or induce any person, firm, association or corporation to purchase, discount, or in any way invest in or accept as collateral security any bonds, bill, share of stock, note, warehouse receipt, or any security; or with the purpose to deceive, mislead, or induce any person, firm, association or corporation to purchase, make any loan upon or invest in any property of any kind; or use any of the aforesaid methods with the intent or purpose to deceive, mislead or induce any other person, firm, or corporation for a valuable consideration to employ the services of any person, firm, association, or corporation so advertising such services.

SEC. 2. That prosecution hereunder shall be in the police court of the District of Columbia upon information filed by the United States District Attorney for the District of Columbia, or one of his assistants.

SEC. 3. That any person, firm, or association violating any of the provisions of this Act shall, upon conviction thereof, be punished by a fine of not more than \$500 or by imprisonment of not more than sixty days, or by both fine and imprisonment, in the discretion of the court. A corporation convicted of an offense under the provisions of this Act shall be fined not more than \$500, and its president or such other officials as may be responsible for the conduct and management thereof shall be imprisoned not more than sixty days, in the discretion of the court.

SEC. 4. That all Acts or parts of Acts inconsistent herewith are hereby repealed.

Approved, May 29, 1916 (39 St. L. pt. 1, p. 165).

PROBATION SYSTEM

An Act For the establishment of a probation system for the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the supreme court of the District of Columbia in general term may appoint one probation officer, at a salary of one thousand eight hundred dollars per annum, and as many volunteer assistant probation officers, male or female, as occasion may require; and that the police court of the District of Columbia may appoint one chief probation officer, at a salary of one thousand five hundred dollars per annum, and one assistant probation officer, at a salary of one thousand two hundred dollars per annum, and as many volunteer assistant probation officers, male or female, as the occasion may require. All such probation officers and assistants shall be appointed for a term of two years and may be removed by the respective courts appointing them. All such volunteer probation officers shall serve without compensation, and shall have such powers and perform such duties as may be assigned to them by said courts.

SEC. 2. That said supreme court shall have power in any case, except those involving treason, homicide, rape, arson, kidnaping, or a second conviction of a felony, after conviction or after a plea of guilty of a felony or misdemeanor and after the imposition of a sentence thereon but before commitment, and the said police court shall have like power, after a conviction or a plea of guilty in any case of misdemeanor, to place the defendant upon probation, provided that it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public as well as of the defendant would be subserved thereby, and may suspend the imposition or execution of the sentence, as the case may be, for such time and upon such terms as it may deem best and place the defendant in charge of a probation officer. The probationer shall be provided by the clerk of the court with a written statement of the terms and conditions of his probation at the time when he is placed

thereon. He shall observe the rules prescribed for his conduct by the court and report to the probation officer as directed. No person shall be put on probation except with his or her consent.

SEC. 3. That the probation officers shall carefully investigate all cases referred to them by the court, and make recommendations to the court to enable it to decide whether the defendant ought to be placed under probation, and shall report to the court, from time to time as may be required by it, touching all cases in their care, to the end that the court may be at all times fully informed of the circumstances and conduct of probationers.

SEC. 4. That upon the expiration of the term fixed for such probation, the probation officer shall report that fact to the court, with a statement of the conduct of the probationer while on probation, and the court may thereupon discharge the probationer from further supervision, or may extend the probation, as shall seem advisable. At any time during the probationary term the court may modify the terms and conditions of the order of probation, or may terminate such probation, when in the opinion of the court the ends of justice shall require, and when the probation is so terminated the court shall enter an order discharging the probationer from serving the imposed penalty; or the court may revoke the order of probation and cause the rearrest of the probationer and impose a sentence and require him to serve the sentence or pay the fine originally imposed, or both, as the case may be, and the time of probation shall not be taken into account to diminish the time for which he was originally sentenced.

SEC. 5. That the chief probation officer of each court shall be entitled, for himself and his assistants, to a room in the building occupied by that court, and all necessary stationery and supplies for the transaction of the business of his office, and all the probation officers except volunteer officers shall be entitled to their necessary expenses in performing the duties of their office, under the direction of the court, the amount of the expense for such stationery, supplies, and expenses to be fixed and allowed by the court upon proper vouchers submitted to it by the probation officers, and accounts duly verified by their oath; and for the purpose of this Act there is hereby appropriated the sum of five thousand dollars, one half to be paid out of any money in the Treasury not otherwise appropriated and the other half out of the revenues of the District of Columbia.

Approved, June 25, 1910 (36 Stat., pt. 1, p. 864).

See act of March 4, 1919, 40 Stat. L., pt. 1, p. 1324, increasing number of assistants to probation officers and increasing appropriation therefor.

PURCHASE, SALE, AND POSSESSION OF WILD BIRDS

An Act To prohibit the purchase, sale, or possession for the purpose of sale of certain wild birds in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful, within the District of Columbia, for any person at any

time to buy, sell, or expose for sale, or to have in possession for the purpose of selling, any heath hen, sage hen, any kind of quail, bob white, grouse, partridge, ptarmigan, prairie chicken, pheasant, wild turkey, Hungarian partridge, English, ring-necked, Mongolian or Chinese pheasant, or marsh blackbird.

SEC. 2. That nothing herein contained shall prevent the right of any person to take or kill any game birds herein defined when the same shall be so taken or killed by virtue of the authority of a license duly issued by the proper authorities of said District of Columbia for scientific purposes.

That any person who shall violate any of the provisions of this Act shall be fined not more than \$100, or be imprisoned for not more than one month, or both so fined and imprisoned: *Provided*, That each bird mentioned in this Act so had in possession, bought, sold, exposed for sale, or had in possession for the purpose of sale shall constitute a separate offense.

SEC. 3. That nothing in this Act shall prevent the sale at any time of Hungarian partridges, English, ring-necked, Mongolian or Chinese pheasants, when the same shall have been raised in captivity, or the sale of birds mentioned in this Act alive, for propagating purposes, under such regulations and requirements as shall be prescribed by the Commissioners of the District of Columbia.

SEC. 4. That all Acts or parts of Acts in conflict herewith are hereby repealed.

Approved, December 18, 1919 (41 Stat. L., pt. 1, p. 368).

VAGRANCY

[Extract from an Act approved March 3, 1909 (35 St. L., pt. 1, p. 711)]

That the following-described persons in the District of Columbia are hereby declared to be vagrants:

Idle persons who, not having visible means of support, live without lawful employment; persons wandering abroad and visiting tippling shops or houses of ill fame, or lodging in groceries, outhouses, market places, sheds, barns, or in the open air, and not giving a good account of themselves; persons wandering abroad and begging, or who go about from door to door or place themselves in the streets, highways, passages, or other public places to beg or receive alms.

All persons leading an idle, immoral, or profligate life who have no property to support them and who are able of body to work and do not work, including all able-bodied persons without other visible means of support who shall live in idleness upon the wages or earnings of their mother, wife, or minor child or children.

Every person known to be a pickpocket, thief, burglar, or confidence operator, either by his own confession or by his having been convicted in the District of Columbia or elsewhere of either of such offenses, and having no visible or lawful means of support, when found loitering around in any building, park, highway, street, avenue, alley, or reservation, steamboat landing, railroad depot, station, banking institution, broker's office, place of amusement,

room, store, shop, public place, or car or omnibus or other vehicle, or at any public gathering or assembly.

Persons upon whom shall be found any instrument, tool, or other implement used for the commission of burglary or the commission of any other crime against property, or for picking locks or pockets who shall fail to give a good account of the possession of the same, and all persons who by the common law are vagrants whether embraced in any of the foregoing classifications or not.

That every person in the District of Columbia who shall be convicted of vagrancy under the provisions of this Act shall be required to enter into security in a sum not exceeding five hundred dollars, conditioned upon his good behavior and industry for the period of one year, and if he shall fail to give such security he shall be committed to the workhouse in the said District for a term not to exceed one year. The security herein mentioned shall be in the nature of a recognizance to the District of Columbia with a surety or sureties to be approved by the police court of the said District, in which court all prosecutions under this Act shall be conducted in the manner now provided by law for the prosecution of offenses against the laws and ordinances of the said District, but nothing contained in section forty-four of the Code of Law for the District of Columbia shall be so construed as to create or give to the accused, in prosecutions under this Act, any right to trial by jury not existing by force of the Constitution of the United States.

NATIONAL MOTOR VEHICLE THEFT ACT

An Act To punish the transportation of stolen motor vehicles in interstate or foreign commerce

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the National Motor Vehicle Theft Act.

SEC. 2. That when used in this Act:

(a) The term "motor vehicle" shall include an automobile, automobile truck, automobile wagon, motor cycle, or any other self-propelled vehicle not designed for running on rails;

(b) The term "interstate or foreign commerce" as used in this Act shall include transportation from one State, Territory, or the District of Columbia, to another State, Territory, or the District of Columbia, or to a foreign country, or from a foreign country to any State, Territory, or the District of Columbia.

SEC. 3. That whoever shall transport or cause to be transported in interstate or foreign commerce a motor vehicle, knowing the same to have been stolen, shall be punished by a fine of not more than \$5,000, or by imprisonment of not more than five years, or both.

SEC. 4. That whoever shall receive, conceal, store, barter, sell, or dispose of any motor vehicle, moving as, or which is a part of, or which constitutes interstate or foreign commerce, knowing the same to have been stolen, shall be punished by a fine of not more than \$5,000, or by imprisonment of not more than five years, or both.

SEC. 5. That any person violating this Act may be punished in any district in or through which such motor vehicle has been transported or removed by such offender.

Received by the President, October 17, 1919.

(NOTE BY THE DEPARTMENT OF STATE.—The foregoing act having been presented to the President of the United States for his approval, and not having been returned by him to the house of Congress in which it originated within the time prescribed by the Constitution of the United States, has become a law without his approval.)

(41 Stat. L. pt. 1, p. 324.)

FOR PRESERVATION OF THE PUBLIC PEACE

An Act For the preservation of the public peace and the protection of property within the District of Columbia

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, * * **

SECS. 5-6. *That it shall not be lawful for any person or persons within the District of Columbia to congregate and assemble in any street, avenue, alley, road, or highway, or in or around any public building or inclosure, or any park or reservation, or at the entrance of any private building or inclosure, and engage in loud and boisterous talking or other disorderly conduct, or to insult or make rude or obscene gestures or comments or observations on persons passing by, or in their hearing, or to crowd, obstruct, or incommode the free use of any such street, avenue, alley, road, highway, or any of the foot pavements thereof, or the free entrance into any public or private building or inclosure; that it shall not be lawful for any person or persons to curse, swear, or make use of any profane language or indecent or obscene words, or engage in any disorderly conduct in any street, avenue, alley, road, highway, public park or inclosure, public building, church, or assembly room, or in any other public place, or in any place wherefrom the same may be heard in any street, avenue, alley, road, highway, public park or inclosure, or other building, or in any premises other than those where the offense was committed, under a penalty of not more than twenty-five dollars for each and every such offense.* (30 Stat. L. p. 723.)

SEC. 7. That it shall not be lawful for any prostitute or lewd woman to invite, entice, persuade, or to address for the purpose of inviting, enticing, or persuading any person or persons, in or upon any avenue, street, road, highway, open space, alley, public square, or inclosure in the District of Columbia, to accompany, go with, or follow her to her residence, or to any other house or building, inclosure, or other place, for the purpose of prostitution, under a penalty, if the person so invited, enticed, or persuaded, or addressed for the purpose of inviting, enticing, or persuading shall be an adult, of not more than twenty-five dollars for each and every such offense, and if the person invited, enticed, or persuaded, or addressed for the purpose of inviting, enticing, or persuading be a minor, under a penalty of no more than fifty dollars for each and every such offense. And it shall not be lawful for any prostitute or woman of lewd character to invite, entice, or persuade, or address for the purpose of inviting, enticing, or persuading any person or persons from any door, window, porch, or portico of any house or building to enter any house, or go with, accompany, or follow her to any place whatever, for the purpose

of prostitution, under the like penalties herein provided for the same disorderly conduct in the streets, avenues, roads, highways, or alleys, public squares, open places, or inclosures.

SEC. 8. *That all vagrants, all idle and disorderly persons, persons of evil life or evil fame, persons who have no visible means of support, persons repeatedly drunk in or about any of the streets, avenues, alleys, roads, highways, or other public places within the District of Columbia, persons repeatedly loitering in or around tippling houses, all suspicious persons, all public prostitutes, and all persons who lead a lewd or lascivious course of life, shall upon conviction thereof be fined not to exceed forty dollars, or shall be required to enter into security for their good behavior for a period of six months. Said security shall be in the nature of a recognizance to the District of Columbia, to be approved by the court, in a penalty not exceeding five hundred dollars, conditioned that the offender shall not, for the space of six months, repeat the offense with which he or she is charged and shall in other respects conduct themselves properly.* (30 Stat. L. p. 723.)

SEC. 9. *That it shall not be lawful for any person or persons to make any obscene or indecent exposure of his or her person or their persons in any street, avenue or alley, road or highway, open space, public square, or other public space or inclosure, in the District of Columbia, or to make any such obscene or indecent exposure of the person in any dwelling or other building or other place wherefrom the same may be seen in any street, avenue, alley, road or highway, open space, public square, or public or private building or inclosure, under a penalty not to exceed two hundred and fifty dollars for each and every such offense. That the taking and carrying away of the property of another in the District of Columbia without right to do so shall be a misdemeanor, punishable by a fine not to exceed one hundred dollars, or imprisonment for a term not to exceed six months, or both.* (34 Stat. L. pt. 1, p. 126, repealing 30 Stat. L. p. 723.)

* * * * *

SEC. 11. That it shall not be lawful for any person or persons to molest or disturb any congregation engaged in any religious exercise or proceedings in any church or place of worship in the District of Columbia; and it shall be lawful for any of the authorities of said churches to arrest or cause to be arrested any person or persons so offending, and take him, her, or them to the nearest police station, to be there held for trial; and any person or persons violating the provisions of this section shall forfeit and pay a fine of not more than one hundred dollars for every such offense.

* * * * *

SEC. 18. That all prosecutions for violations of any of the provisions of any of the laws or ordinances provided for by this act shall be conducted in the name of and for the benefit of the District of Columbia, and in the same manner as now provided by law for the prosecution of offenses against the laws and ordinances of the said District. Any person convicted of any violation of any of the provisions of this act, and who shall fail to pay the fine or penalty imposed, or to give security where the same is required, shall be committed to the workhouse in the District of Columbia for a term not exceeding six months for each and every offense.

SEC. 19. That all laws or ordinances, or part of laws or ordinances, now in force in the District of Columbia inconsistent with the provisions of this act, or any part thereof, are hereby repealed.

Approved, July 29, 1892 (27 Stat. L. pt. 1, p. 322).

NATIONAL PROHIBITION ACT

An Act To prohibit intoxicating beverages, and to regulate the manufacture, production, use, and sale of high-proof spirits for other than beverage purposes, and to insure an ample supply of alcohol and promote its use in scientific research and in the development of fuel, dye, and other lawful industries

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the short title of this Act shall be the "National Prohibition Act."

TITLE I

TO PROVIDE FOR THE ENFORCEMENT OF WAR PROHIBITION

The term "War Prohibition Act" used in this Act shall mean the provisions of any Act or Acts prohibiting the sale and manufacture of intoxicating liquors until the conclusion of the present war and thereafter until the termination of demobilization, the date of which shall be determined and proclaimed by the President of the United States. The words "beer, wine, or other intoxicating malt or vinous liquors" in the War Prohibition Act shall be hereafter construed to mean any such beverages which contain one-half of 1 per centum or more of alcohol by volume: *Provided*, That the foregoing definition shall not extend to dealcoholized wine nor to any beverage or liquid produced by the process by which beer, ale, porter or wine is produced, if it contains less than one-half of 1 per centum of alcohol by volume, and is made as prescribed in section 37 of Title II of this Act, and is otherwise denominated than as beer, ale, or porter, and is contained and sold in, or from, such sealed and labeled bottles, casks, or containers as the commissioner may by regulation prescribe.

SEC. 2. The Commissioner of Internal Revenue, his assistants, agents, and inspectors, shall investigate and report violations of the War Prohibition Act to the United States attorney for the district in which committed, who shall be charged with the duty of prosecuting, subject to the direction of the Attorney General, the offenders as in the case of other offenses against laws of the United States; and such Commissioner of Internal Revenue, his assistants, agents, and inspectors may swear out warrants before United States commissioners or other officers or courts authorized to issue the same for the apprehension of such offenders, and may, subject to the control of the said United States attorney, conduct the prosecution at the committing trial for the purpose of having the offenders held for the action of a grand jury.

SEC. 3. Any room, house, building, boat, vehicle, structure, or place of any kind where intoxicating liquor is sold, manufactured, kept for sale, or bartered in violation of the War Prohibition Act, and all intoxicating liquor and all property kept and used in main-

taining such a place, is hereby declared to be a public and common nuisance, and any person who maintains or assists in maintaining such public and common nuisance shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than \$100 nor more than \$1,000, or be imprisoned for not less than thirty days or more than one year, or both. If a person has knowledge that his property is occupied or used in violation of the provisions of the War Prohibition Act and suffers the same to be so used, such property shall be subject to a lien for, and may be sold to pay, all fines and costs assessed against the occupant of such building or property for any violation of the War Prohibition Act occurring after the passage hereof, which said lien shall attach from the time of the filing of notice of the commencement of the suit in the office where the records of the transfer of real estate are kept; and any such lien may be established and enforced by legal action instituted for that purpose in any court having jurisdiction. Any violation of this title upon any leased premises by the lessee or occupant thereof shall, at the option of the lessor, work a forfeiture of the lease.

SEC. 4. The United States attorney for the district where such nuisance as is defined in this Act exists, or any officer designated by him or the Attorney General of the United States, may prosecute a suit in equity in the name of the United States to abate and enjoin the same. Actions in equity to enjoin and abate such nuisances may be brought in any court having jurisdiction to hear and determine equity causes. The jurisdiction of the courts of the United States under this section shall be concurrent with that of the courts of the several States.

If it be made to appear by affidavit, or other evidence under oath, to the satisfaction of the court, or judge in vacation, that the nuisance complained of exists, a temporary writ of injunction shall forthwith issue restraining the defendant or defendants from conducting or permitting the continuance of such nuisance until the conclusion of the trial. Where a temporary injunction is prayed for, the court may issue an order restraining the defendants and all other persons from removing or in any way interfering with the liquor or fixtures, or other things used in connection with the violation constituting the nuisance. No bond shall be required as a condition for making any order or issuing any writ of injunction under this Act. If the court shall find the property involved was being unlawfully used as aforesaid at or about the time alleged in the petition, the court shall order that no liquors shall be manufactured, sold, bartered, or stored in such room, house, building, boat, vehicle, structure, or places of any kind, for a period of not exceeding one year, or during the war and the period of demobilization. Whenever an action to enjoin a nuisance shall have been brought pursuant to the provisions of this Act, if the owner, lessee, tenant, or occupant appears and pays all costs of the proceedings and files a bond, with sureties to be approved by the clerk of the court in which the action is brought, in the liquidated sum of not less than \$500 nor more than \$1,000, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein a period of one year thereafter, or during the war and period of demobilization, the court, or in vacation the judge, may, if satisfied of his good

faith, direct by appropriate order that the property, if already closed or held under the order of abatement, be delivered to said owner, and said order of abatement canceled, so far as the same may relate to said property; or if said bond be given and costs therein paid before judgment on an order of abatement, the action shall be thereby abated as to said room, house, building, boat, vehicle, structure, or place only. The release of the property under the provisions of this section shall not release it from any judgment, lien, penalty, or liability to which it may be subject by law.

In the case of the violation of any injunction, temporary or permanent, granted pursuant to the provisions of this Title, the court, or in vacation a judge thereof, may summarily try and punish the defendant. The proceedings for punishment for contempt shall be commenced by filing with the clerk of the court from which such injunction issued information under oath setting out the alleged facts constituting the violation, whereupon the court or judge shall forthwith cause a warrant to issue under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may demand the production and oral examination of the witnesses. Any person found guilty of contempt under the provisions of this section shall be punished by a fine of not less than \$500 nor more than \$1,000, or by imprisonment of not less than thirty days nor more than twelve months, or by both fine and imprisonment.

SEC. 5. The Commissioner of Internal Revenue, his assistants, agents, and inspectors, and all other officers of the United States whose duty it is to enforce criminal laws, shall have all the power for the enforcement of the War Prohibition Act or any provisions thereof which is conferred by law for the enforcement of existing laws relating to the manufacture or sale of intoxicating liquors under the laws of the United States.

SEC. 6. If any section or provision of this Act shall be held to be invalid, it is hereby provided that all other provisions of this Act which are not expressly held to be invalid shall continue in full force and effect.

SEC. 7. None of the provisions of this Act shall be construed to repeal any of the provisions of the "War Prohibition Act," or to limit or annul any order or regulation prohibiting the manufacture, sale, or disposition of intoxicating liquors within certain prescribed zones or districts, nor shall the provisions of this Act be construed to prohibit the use of the power of the military or naval authorities to enforce the regulations of the President or Secretary of War or Navy issued in pursuance of law, prohibiting the manufacture, use, possession, sale, or other disposition of intoxicating liquors during the period of the war and demobilization thereafter.

TITLE II

PROHIBITION OF INTOXICATING BEVERAGES

SEC. 1. When used in Title II and Title III of this Act (1) The word "liquor" or the phrase "intoxicating liquor" shall be construed to include alcohol, brandy, whisky, rum, gin, beer, ale, porter, and wine, and in addition thereto any spirituous, vinous, malt, or fer-

mented liquor, liquids, and compounds, whether medicated, proprietary, patented, or not, and by whatever name called, containing one-half of 1 per centum or more of alcohol by volume which are fit for use for beverage purposes: *Provided*, That the foregoing definition shall not extend to dealcoholized wine nor to any beverage or liquid produced by the process by which beer, ale, porter or wine is produced, if it contains less than one-half of 1 per centum of alcohol by volume, and is made as prescribed in section 37 of this title, and is otherwise denominated than as beer, ale, or porter, and is contained and sold in, or from, such sealed and labeled bottles, casks, or containers as the commissioner may by regulation prescribe.

(2) The word "person" shall mean and include natural persons, associations, copartnerships, and corporations.

(3) The word "commissioner" shall mean Commissioner of Internal Revenue.

(4) The term "application" shall mean a formal written request supported by a verified statement of facts showing that the commissioner may grant the request.

(5) The term "permit" shall mean a formal written authorization by the commissioner setting forth specifically therein the things that are authorized.

(6) The term "bond" shall mean an obligation authorized or required by or under this Act or any regulation, executed in such form and for such a penal sum as may be required by a court, the commissioner or prescribed by regulation.

(7) The term "regulation" shall mean any regulation prescribed by the commissioner with the approval of the Secretary of the Treasury for carrying out the provisions of this Act, and the commissioner is authorized to make such regulations.

Any act authorized to be done by the commissioner may be performed by any assistant or agent designated by him for that purpose. Records required to be filed with the commissioner may be filed with an assistant commissioner or other person designated by the commissioner to receive such records.

SEC. 2. The Commissioner of Internal Revenue, his assistants, agents, and inspectors shall investigate and report violations of this Act to the United States attorney for the district in which committed, who is hereby charged with the duty of prosecuting the offenders, subject to the direction of the Attorney General, as in the case of other offenses against the laws of the United States; and such Commissioner of Internal Revenue, his assistants, agents, and inspectors may swear out warrants before United States commissioners or other officers or courts authorized to issue the same for the apprehension of such offenders, and may, subject to the control of the said United States attorney, conduct the prosecution at the committing trial for the purpose of having the offenders held for the action of a grand jury. Section 1014 of the Revised Statutes of the United States is hereby made applicable in the enforcement of this Act. Officers mentioned in said section 1014 are authorized to issue search warrants under the limitations provided in Title XI of the Act approved June 15, 1917 (Fortieth Statutes at Large, page 217, et seq.).

SEC. 3. No person shall on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as authorized in this Act, and all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented.

Liquor for nonbeverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished and possessed, but only as herein provided, and the commissioner may, upon application, issue permits therefor: *Provided*, That nothing in this Act shall prohibit the purchase and sale of warehouse receipts covering distilled spirits on deposit in Government bonded warehouses, and no special tax liability shall attach to the business of purchasing and selling such warehouse receipts.

SEC. 4. The articles enumerated in this section shall not, after having been manufactured and prepared for the market, be subject to the provisions of this Act if they correspond with the following descriptions and limitations, namely:

(a) Denatured alcohol or denatured rum produced and used as provided by laws and regulations now or hereafter in force.

(b) Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopoeia, National Formulary or the American Institute of Homeopathy that are unfit for use for beverage purposes.

(c) Patented, patent, and proprietary medicines that are unfit for use for beverage purposes.

(d) Toilet, medicinal, and antiseptic preparations and solutions that are unfit for use for beverage purposes.

(e) Flavoring extracts and sirups that are unfit for use as a beverage, or for intoxicating beverage purposes.

(f) Vinegar and preserved sweet cider.

A person who manufactures any of the articles mentioned in this section may purchase and possess liquor for that purpose, but he shall secure permits to manufacture such articles and to purchase such liquor, give the bonds, keep the records, and make the reports specified in this Act and as directed by the commissioner. No such manufacturer shall sell, use, or dispose of any liquor otherwise than as an ingredient of the articles authorized to be manufactured therefrom. No more alcohol shall be used in the manufacture of any extract, sirup, or the articles named in paragraphs b, c, and d of this section which may be used for beverage purposes than the quantity necessary for extraction or solution of the elements contained therein and for the preservation of the article.

Any person who shall knowingly sell any of the articles mentioned in paragraphs a, b, c, and d of this section for beverage purposes, or any extract or sirup for intoxicating beverage purposes, or who shall sell any of the same under circumstances from which the seller might reasonably deduce the intention of the purchaser to use them for such purposes, or shall sell any beverage containing one-half of 1 per centum or more of alcohol by volume in which any extract, sirup, or other article is used as an ingredient, shall be subject to the

penalties provided in section 29 of this Title. If the commissioner shall find, after notice and hearing as provided for in section 5 of this Title, that any person has sold any flavoring extract, sirup, or beverage in violation of this paragraph, he shall notify such person, and any known principal for whom the sale was made, to desist from selling such article; and it shall thereupon be unlawful for a period of one year thereafter for any person so notified to sell any such extract, sirup, or beverage without making an application for, giving a bond, and obtaining a permit so to do, which permit may be issued upon such conditions as the commissioner may deem necessary to prevent such illegal sales, and in addition the commissioner shall require a record and report of sales.

SEC. 5. Whenever the commissioner has reason to believe that any article mentioned in section 4 does not correspond with the descriptions and limitations therein provided, he shall cause an analysis of said article to be made, and if, upon such analysis, the commissioner shall find that said article does not so correspond, he shall give not less than fifteen days' notice in writing to the person who is the manufacturer thereof to show cause why said article should not be dealt with as an intoxicating liquor, such notice to be served personally or by registered mail, as the commissioner may determine, and shall specify the time when, the place where, and the name of the agent or official before whom such person is required to appear.

If the manufacturer of said article fails to show to the satisfaction of the commissioner that the article corresponds to the descriptions and limitations provided in section 4 of this Title, his permit to manufacture and sell such article shall be revoked. The manufacturer may by appropriate proceeding in a court of equity have the action of the commissioner reviewed, and the court may affirm, modify, or reverse the finding of the commissioner as the facts and law of the case may warrant, and during the pendency of such proceedings may restrain the manufacture, sale, or other disposition of such article.

SEC. 6. No one shall manufacture, sell, purchase, transport, or prescribe any liquor without first obtaining a permit from the commissioner so to do, except that a person may, without a permit, purchase and use liquor for medicinal purposes when prescribed by a physician as herein provided, and except that any person who in the opinion of the commissioner is conducting a bona fide hospital or sanatorium engaged in the treatment of persons suffering from alcoholism, may, under such rules, regulations, and conditions as the commissioner shall prescribe, purchase and use, in accordance with the methods in use in such institution, liquor, to be administered to the patients of such institution under the direction of a duly qualified physician employed by such institution.

All permits to manufacture, prescribe, sell, or transport liquor, may be issued for one year, and shall expire on the 31st day of December next succeeding the issuance thereof: *Provided*, That the commissioner may without formal application or new bond extend any permit granted under this Act or laws now in force after August 31 in any year to December 31 of the succeeding year: *Provided further*, That permits to purchase liquor for the purpose of manufacturing or selling as provided in this Act shall not be in force

to exceed ninety days from the day of issuance. A permit to purchase liquor for any other purpose shall not be in force to exceed thirty days. Permits to purchase liquor shall specify the quantity and kind to be purchased and the purpose for which it is to be used. No permit shall be issued to any person who within one year prior to the application therefor or issuance thereof shall have violated the terms of any permit issued under this Title or any law of the United States or of any State regulating traffic in liquor. No permit shall be issued to anyone to sell liquor at retail, unless the sale is to be made through a pharmacist designated in the permit and duly licensed under the laws of his State to compound and dispense medicine prescribed by a duly licensed physician. No one shall be given a permit to prescribe liquor unless he is a physician duly licensed to practice medicine and actively engaged in the practice of such profession. Every permit shall be in writing, dated when issued, and signed by the commissioner or his authorized agent. It shall give the name and address of the person to whom it is issued and shall designate and limit the acts that are permitted and the time when and place where such acts may be performed. No permit shall be issued until a verified, written application shall have been made therefor, setting forth the qualification of the applicant and the purpose for which the liquor is to be used.

The commissioner may prescribe the form of all permits and applications and the facts to be set forth therein. Before any permit is granted the commissioner may require a bond in such form and amount as he may prescribe to insure compliance with the terms of the permit and the provisions of this title. In the event of the refusal by the commissioner of any application for a permit, the applicant may have a review of his decision before a court of equity in the manner provided in section 5 hereof.

Nothing in this title shall be held to apply to the manufacture, sale, transportation, importation, possession, or distribution of wine for sacramental purposes, or like religious rites, except section 6 (save as the same requires a permit to purchase) and section 10 hereof, and the provisions of this Act prescribing penalties for the violation of either of said sections. No person to whom a permit may be issued to manufacture, transport, import, or sell wines for sacramental purposes or like religious rites shall sell, barter, exchange, or furnish any such to any person not a rabbi, minister of the gospel, priest, or an officer duly authorized for the purpose by any church or congregation, nor to any such except upon an application duly subscribed by him, which application, authenticated as regulations may prescribe, shall be filed and preserved by the seller. The head of any conference or diocese or other ecclesiastical jurisdiction may designate any rabbi, minister, or priest to supervise the manufacture of wine to be used for the purposes and rites in this section mentioned, and the person so designated may, in the discretion of the commissioner, be granted a permit to supervise such manufacture.

SEC. 7. No one but a physician holding a permit to prescribe liquor shall issue any prescription for liquor. And no physician shall prescribe liquor unless after careful physical examination of the person for whose use such prescription is sought, or if such examination is found impracticable, then upon the best information obtainable,

he in good faith believes that the use of such liquor as a medicine by such person is necessary and will afford relief to him from some known ailment. Not more than a pint of spirituous liquor to be taken internally shall be prescribed for use by the same person within any period of ten days and no prescription shall be filled more than once. Any pharmacist filling a prescription shall at the time indorse upon it over his own signature the word "canceled," together with the date when the liquor was delivered, and then make the same a part of the record that he is required to keep as herein provided.

Every physician who issues a prescription for liquor shall keep a record, alphabetically arranged in a book prescribed by the commissioner, which shall show the date of issue, amount prescribed, to whom issued, the purpose or ailment for which it is to be used and directions for use, stating the amount and frequency of the dose.

SEC. 8. The commissioner shall cause to be printed blanks for the prescriptions herein required, and he shall furnish the same, free of cost, to physicians holding permits to prescribe. The prescription blanks shall be printed in book form and shall be numbered consecutively from one to one hundred, and each book shall be given a number, and the stubs in each book shall carry the same numbers as and be copies of the prescriptions. The books containing such stubs shall be returned to the commissioner when the prescription blanks have been used, or sooner, if directed by the commissioner. All unused, mutilated, or defaced blanks shall be returned with the book. No physician shall prescribe and no pharmacist shall fill any prescription for liquor except on blanks so provided, except in cases of emergency, in which event a record and report shall be made and kept as in other cases.

SEC. 9. If at any time there shall be filed with the commissioner a complaint under oath setting forth facts showing, or if the commissioner has reason to believe that any person who has a permit is not in good faith conforming to the provisions of this Act, or has violated the laws of any State relating to intoxicating liquor, the commissioner or his agent shall immediately issue an order citing such person to appear before him on a day named not more than thirty and not less than fifteen days from the date of service upon such permittee of a copy of the citation, which citation shall be accompanied by a copy of such complaint, or in the event that the proceedings be initiated by the commissioner with a statement of the facts constituting the violation charged, at which time a hearing shall be had unless continued for cause. Such hearings shall be held within the judicial district and within fifty miles of the place where the offense is alleged to have occurred, unless the parties agree on another place. If it be found that such person has been guilty of willfully violating any such laws, as charged, or has not in good faith conformed to the provisions of this Act, such permit shall be revoked, and no permit shall be granted to such person within one year thereafter. Should the permit be revoked by the commissioner the permittee may have a review of his decision before a court of equity in the manner provided in section 5 hereof. During the pendency of such action such permit shall be temporarily revoked.

SEC. 10. No person shall manufacture, purchase for sale, sell, or transport any liquor without making at the time a permanent record thereof showing in detail the amount and kind of liquor manufactured, purchased, sold, or transported, together with the names and addresses of the persons to whom sold, in case of sale, and the consignor and consignee in case of transportation, and the time and place of such manufacture, sale, or transportation. The commissioner may prescribe the form of such record, which shall at all times be open to inspection as in this Act provided.

SEC. 11. All manufacturers and wholesale or retail druggists shall keep as a part of the records required of them a copy of all permits to purchase on which a sale of any liquor is made, and no manufacturer or wholesale druggist shall sell or otherwise dispose of any liquor except at wholesale and only to persons having permits to purchase in such quantities.

SEC. 12. All persons manufacturing liquor for sale under the provisions of this title shall securely and permanently attach to every container thereof, as the same is manufactured, a label stating name of manufacturer, kind and quantity of liquor contained therein, and the date of its manufacture, together with the number of the permit authorizing the manufacture thereof; and all persons possessing such liquor in wholesale quantities shall securely keep and maintain such label thereon; and all persons selling at wholesale shall attach to every package of liquor, when sold, a label setting forth the kind and quantity of liquor contained therein, by whom manufactured, the date of sale, and the person to whom sold; which label shall likewise be kept and maintained thereon until the liquor is used for the purpose for which such sale was authorized.

SEC. 13. It shall be the duty of every carrier to make a record at the place of shipment of the receipt of any liquor transported, and he shall deliver liquor only to persons who present to the carrier a verified copy of a permit to purchase which shall be made a part of the carrier's permanent record at the office from which delivery is made.

The agent of the common carrier is hereby authorized to administer the oath to the consignee in verification of the copy of the permit presented, who, if not personally known to the agent, shall be identified before the delivery of the liquor to him. The name and address of the person identifying the consignee shall be included in the record.

SEC. 14. It shall be unlawful for a person to use or induce any carrier, or any agent or employee thereof, to carry or ship any package or receptacle containing liquor without notifying the carrier of the true nature and character of the shipment. No carrier shall transport nor shall any person receive liquor from a carrier unless there appears on the outside of the package containing such liquor the following information:

Name and address of the consignor or seller, name and address of the consignee, kind and quantity of liquor contained therein, and number of the permit to purchase or ship the same, together with the name and address of the person using the permit.

SEC. 15. It shall be unlawful for any consignee to accept or receive any package containing any liquor upon which appears a statement known to him to be false, or for any carrier or other person

to consign, ship, transport, or deliver any such package, knowing such statement to be false.

SEC. 16. It shall be unlawful to give to any carrier or any officer, agent, or person acting or assuming to act for such carrier an order requiring the delivery to any person of any liquor or package containing liquor consigned to, or purporting or claimed to be consigned to a person, when the purpose of the order is to enable any person not an actual bona fide consignee to obtain such liquor.

SEC. 17. It shall be unlawful to advertise anywhere, or by any means or method, liquor, or the manufacture, sale, keeping for sale or furnishing of the same, or where, how, from whom, or at what price the same may be obtained. No one shall permit any sign or billboard containing such advertisement to remain upon one's premises. But nothing herein shall prohibit manufacturers and wholesale druggists holding permits to sell liquor from furnishing price lists, with description of liquor for sale, to persons permitted to purchase liquor, or from advertising alcohol in business publications or trade journals circulating generally among manufacturers of lawful alcoholic perfumes, toilet preparations, flavoring extracts, medicinal preparations, and like articles: *Provided, however,* That nothing in this Act or in the Act making appropriations for the Post Office Department, approved March 3, 1917 (Thirty-ninth Statutes at Large, Part 1, page 1058, et seq.), shall apply to newspapers published in foreign countries when mailed to this country.

SEC. 18. It shall be unlawful to advertise, manufacture, sell, or possess for sale any utensil, contrivance, machine, preparation, compound, tablet, substance, formula direction, or recipe advertised, designed, or intended for use in the unlawful manufacture of intoxicating liquor.

SEC. 19. No person shall solicit or receive, nor knowingly permit his employee to solicit or receive, from any person any order for liquor or give any information of how liquor may be obtained in violation of this Act.

SEC. 20. Any person who shall be injured in person, property, means of support, or otherwise by any intoxicated person, or by reason of the intoxication of any person, whether resulting in his death or not, shall have a right of action against any person who shall, by unlawfully selling to or unlawfully assisting in procuring liquor for such intoxicated person, have caused or contributed to such intoxication, and in any such action such person shall have a right to recover actual and exemplary damages. In case of the death of either party, the action or right of action given by this section shall survive to or against his or her executor or administrator, and the amount so recovered by either wife or child shall be his or her sole and separate property. Such action may be brought in any court of competent jurisdiction. In any case where parents shall be entitled to such damages, either the father or mother may sue alone therefor, but recovery by one of such parties shall be a bar to suit brought by the other.

SEC. 21. Any room, house, building, boat, vehicle, structure, or place where intoxicating liquor is manufactured, sold, kept, or bar-

tered in violation of this title, and all intoxicating liquor and property kept and used in maintaining the same, is hereby declared to be a common nuisance, and any person who maintains such a common nuisance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or be imprisoned for not more than one year, or both. If a person has knowledge or reason to believe that his room, house, building, boat, vehicle, structure, or place is occupied or used for the manufacture or sale of liquor contrary to the provision of this title, and suffers the same to be so occupied or used, such room, house, building, boat, vehicle, structure, or place shall be subject to a lien for and may be sold to pay all fines and costs assessed against the person guilty of such nuisance for such violation, and any such lien may be enforced by action in any court having jurisdiction.

SEC. 22. An action to enjoin any nuisance defined in this title may be brought in the name of the United States by the Attorney General of the United States or by any United States attorney or any prosecuting attorney of any State or any subdivision thereof or by the commissioner or his deputies or assistants. Such action shall be brought and tried as an action in equity and may be brought in any court having jurisdiction to hear and determine equity cases. If it is made to appear by affidavits or otherwise, to the satisfaction of the court, or judge in vacation, that such nuisance exists, a temporary writ of injunction shall forthwith issue restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial. If a temporary injunction is prayed for, the court may issue an order restraining the defendant and all other persons from removing or in any way interfering with the liquor or fixtures, or other things used in connection with the violation of this Act constituting such nuisance. No bond shall be required in instituting such proceedings. It shall not be necessary for the court to find the property involved was being unlawfully used as aforesaid at the time of the hearing, but on finding that the material allegations of the petition are true, the court shall order that no liquors shall be manufactured, sold, bartered, or stored in such room, house, building, boat, vehicle, structure, or place, or any part thereof. And upon judgment of the court ordering such nuisance to be abated, the court may order that the room, house, building, structure, boat, vehicle, or place shall not be occupied or used for one year thereafter; but the court may, in its discretion, permit it to be occupied or used if the owner, lessee, tenant, or occupant thereof shall give bond with sufficient surety, to be approved by the court making the order, in the penal and liquidated sum of not less than \$500 nor more than \$1,000, payable to the United States, and conditioned that intoxicating liquor will not thereafter be manufactured, sold, bartered, kept, or otherwise disposed of therein or thereon, and that he will pay all fines, costs, and damages that may be assessed for any violation of this title upon said property.

SEC. 23. That any person who shall, with intent to effect a sale of liquor, by himself, his employee, servant, or agent, for himself or any person, company or corporation, keep or carry around on his person, or in a vehicle, or other conveyance whatever, or leave in a

place for another to secure, any liquor, or who shall travel to solicit, or solicit, or take, or accept orders for the sale, shipment, or delivery of liquor in violation of this title is guilty of a nuisance and may be restrained by injunction, temporary and permanent, from doing or continuing to do any of said acts or things.

In such proceedings it shall not be necessary to show any intention on the part of the accused to continue such violations if the action is brought within sixty days following any such violation of the law.

For removing and selling property in enforcing this Act the officer shall be entitled to charge and receive the same fee as the sheriff of the county would receive for levying upon and selling property under execution, and for closing the premises and keeping them closed a reasonable sum shall be allowed by the court.

Any violation of this title upon any leased premises by the lessee or occupant thereof shall, at the option of the lessor, work a forfeiture of the lease.

SEC. 24. In the case of the violation of any injunction, temporary or permanent, granted pursuant to the provisions of this title, the court, or in vacation a judge thereof, may summarily try and punish the defendant. The proceedings for punishment for contempt shall be commenced by filing with the clerk of the court from which such injunction issued information under oath setting out the alleged facts constituting the violation, whereupon the court or judge shall forthwith cause a warrant to issue under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may demand the production and oral examination of the witnesses. Any person found guilty of contempt under the provisions of this section shall be punished by a fine of not less than \$500 nor more than \$1,000, or by imprisonment of not less than thirty days nor more than twelve months, or by both fine and imprisonment.

SEC. 25. It shall be unlawful to have or possess any liquor or property designed for the manufacture of liquor intended for use in violating this title or which has been so used, and no property rights shall exist in any such liquor or property. A search warrant may issue as provided in Title XI of public law numbered 24 of the Sixty-fifth Congress, approved June 15, 1917, and such liquor, the containers thereof, and such property so seized shall be subject to such disposition as the court may make thereof. If it is found that such liquor or property was so unlawfully held or possessed, or had been so unlawfully used, the liquor, and all property designed for the unlawful manufacture of liquor, shall be destroyed, unless the court shall otherwise order. No search warrant shall issue to search any private dwelling occupied as such unless it is being used for the unlawful sale of intoxicating liquor, or unless it is in part used for some business purpose such as a store, shop, saloon, restaurant, hotel, or boarding house. The term "private dwelling" shall be construed to include the room or rooms used and occupied not transiently but solely as a residence in an apartment house, hotel, or boarding house. The property seized on any such warrant shall not be taken from the officer seizing the same on any writ of replevin or other like process.

SEC. 26. When the commissioner, his assistants, inspectors, or any officer of the law shall discover any person in the act of transporting

in violation of the law, intoxicating liquors in any wagon, buggy, automobile, water or air craft, or other vehicle, it shall be his duty to seize any and all intoxicating liquors found therein being transported contrary to law. Whenever intoxicating liquors transported or possessed illegally shall be seized by an officer he shall take possession of the vehicle and team or automobile, boat, air or water craft, or any other conveyance, and shall arrest any person in charge thereof. Such officer shall at once proceed against the person arrested under the provisions of this title in any court having competent jurisdiction; but the said vehicle or conveyance shall be returned to the owner upon execution by him of a good and valid bond, with sufficient sureties, in a sum double the value of the property, which said bond shall be approved by said officer and shall be conditioned to return said property to the custody of said officer on the day of trial to abide the judgment of the court. The court upon conviction of the person so arrested shall order the liquor destroyed, and unless good cause to the contrary is shown by the owner, shall order a sale by public auction of the property seized, and the officer making the sale, after deducting the expenses of keeping the property, the fee for the seizure, and the cost of the sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise at said hearing or in other proceeding brought for said purpose, as being bona fide and as having been created without the lienor having any notice that the carrying vehicle was being used or was to be used for illegal transportation of liquor, and shall pay the balance of the proceeds into the Treasury of the United States as miscellaneous receipts. All liens against property sold under the provisions of this section shall be transferred from the property to the proceeds of the sale of the property. If, however, no one shall be found claiming the team, vehicle, water or air craft, or automobile, the taking of the same, with a description thereof, shall be advertised in some newspaper published in the city or county where taken or if there be no newspaper published in such city or county, in a newspaper having circulation in the county, once a week for two weeks and by handbills posted in three public places near the place of seizure, and if no claimant shall appear within ten days after the last publication of the advertisement, the property shall be sold and the proceeds after deducting the expenses and costs shall be paid into the Treasury of the United States as miscellaneous receipts.

SEC. 27. In all cases in which intoxicating liquors may be subject to be destroyed under the provisions of this Act the court shall have jurisdiction upon the application of the United States attorney to order them delivered to any department or agency of the United States Government for medicinal, mechanical, or scientific uses, or to order the same sold at private sale for such purposes to any person having a permit to purchase liquor the proceeds to be covered into the Treasury of the United States to the credit of miscellaneous receipts, and all liquor heretofore seized in any suit or proceeding brought for violation of law may likewise be so disposed of, if not claimed within sixty days from the date this section takes effect.

SEC. 28. The commissioner, his assistants, agents, and inspectors, and all other officers of the United States, whose duty it is to enforce criminal laws, shall have all the power and protection in the enforcement of this Act or any provisions thereof which is conferred by law

for the enforcement of existing laws relating to the manufacture or sale of intoxicating liquors under the law of the United States.

SEC. 29. Any person who manufactures or sells liquor in violation of this title shall for a first offense be fined not more than \$1,000, or imprisoned not exceeding six months, and for a second or subsequent offense shall be fined not less than \$200 nor more than \$2,000 and be imprisoned not less than one month nor more than five years.

Any person violating the provisions of any permit, or who makes any false record, report, or affidavit required by this title, or violates any of the provisions of this title, for which offense a special penalty is not prescribed, shall be fined for a first offense not more than \$500; for a second offense not less than \$100 nor more than \$1,000, or be imprisoned not more than ninety days; for any subsequent offense he shall be fined not less than \$500 and be imprisoned not less than three months nor more than two years. It shall be the duty of the prosecuting officer to ascertain whether the defendant has been previously convicted and to plead the prior conviction in the affidavit, information, or indictment. The penalties provided in this Act against the manufacture of liquor without a permit shall not apply to a person for manufacturing nonintoxicating cider and fruit juices exclusively for use in his home, but such cider and fruit juices shall not be sold or delivered except to persons having permits to manufacture vinegar.

SEC. 30. No person shall be excused, on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture, from attending and testifying, or producing books, papers, documents, and other evidence in obedience to a subpoena of any court in any suit or proceeding based upon or growing out of any alleged violation of this Act; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpoena and under oath, he may so testify or produce evidence, but no person shall be exempt from prosecution and punishment for perjury committed in so testifying.

SEC. 31. In case of a sale of liquor where the delivery thereof was made by a common or other carrier the sale and delivery shall be deemed to be made in the county or district wherein the delivery was made by such carrier to the consignee, his agent or employee, or in the county or district wherein the sale was made, or from which the shipment was made, and prosecution for such sale or delivery may be had in any such county or district.

SEC. 32. In any affidavit, information, or indictment for the violation of this Act, separate offenses may be united in separate counts and the defendant may be tried on all at one trial and the penalty for all offenses may be imposed. It shall not be necessary in any affidavit, information, or indictment to give the name of the purchaser or to include any defensive negative averments, but it shall be sufficient to state that the act complained of was then and there prohibited and unlawful, but this provision shall not be construed to preclude the trial court from directing the furnishing the defendant a bill of particulars when it deems it proper to do so.

SEC. 33. After February 1, 1920, the possession of liquors by any person not legally permitted under this title to possess liquor shall be

prima facie evidence that such liquor is kept for the purpose of being sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this title. Every person legally permitted under this title to have liquor shall report to the commissioner within ten days after the date when the eighteenth amendment of the Constitution of the United States goes into effect, the kind and amount of intoxicating liquors in his possession. But it shall not be unlawful to possess liquors in one's private dwelling while the same is occupied and used by him as his dwelling only and such liquor need not be reported, provided such liquors are for use only for the personal consumption of the owner thereof and his family residing in such dwelling and of his bona fide guests when entertained by him therein; and the burden of proof shall be upon the possessor in any action concerning the same to prove that such liquor was lawfully acquired, possessed, and used.

SEC. 34. All records and reports kept or filed under the provisions of this Act shall be subject to inspection at any reasonable hour by the commissioner or any of his agents or by any public prosecutor or by any person designated by him, or by any peace officer in the State where the record is kept, and copies of such records and reports duly certified by the person with whom kept or filed may be introduced in evidence with like effect as the originals thereof, and verified copies of such records shall be furnished to the commissioner when called for.

SEC. 35. All provisions of law that are inconsistent with this Act are repealed only to the extent of such inconsistency and the regulations herein provided for the manufacture or traffic in intoxicating liquor shall be construed as in addition to existing laws. This Act shall not relieve anyone from paying any taxes or other charges imposed upon the manufacture or traffic in such liquor. No liquor revenue stamps or tax receipts for any illegal manufacture or sale shall be issued in advance, but upon evidence of such illegal manufacture or sale a tax shall be assessed against, and collected from, the person responsible for such illegal manufacture or sale in double the amount now provided by law, with an additional penalty of \$500 on retail dealers and \$1,000 on manufacturers. The payment of such tax or penalty shall give no right to engage in the manufacture or sale of such liquor, or relieve anyone from criminal liability, nor shall this Act relieve any person from any liability, civil or criminal, heretofore or hereafter incurred under existing laws.

The commissioner, with the approval of the Secretary of the Treasury, may compromise any civil cause arising under this title before bringing action in court; and with the approval of the Attorney General he may compromise any such cause after action thereon has been commenced.

SEC. 36. If any provision of this Act shall be held invalid it shall not be construed to invalidate other provisions of the Act.

SEC. 37. Nothing herein shall prevent the storage in United States bonded warehouses of all liquor manufactured prior to the taking effect of this Act, or prevent the transportation of such liquor to such warehouses or to any wholesale druggist for sale to such druggist for purposes not prohibited when the tax is paid, and permits may be issued therefor.

A manufacturer of any beverage containing less than one-half of 1 per centum of alcohol by volume may, on making application and giving such bond as the commissioner shall prescribe, be given a permit to develop in the manufacture thereof by the usual methods of fermentation and fortification or otherwise a liquid such as beer, ale, porter, or wine, containing more than one-half of 1 per centum of alcohol by volume, but before any such liquid is withdrawn from the factory or otherwise disposed of the alcoholic contents thereof shall under such rules and regulations as the commissioner may prescribe be reduced below such one-half of 1 per centum of alcohol: *Provided*, That such liquid may be removed and transported, under bond and under such regulations as the commissioner may prescribe, from one bonded plant or warehouse to another for the purpose of having the alcohol extracted therefrom. And such liquids may be developed, under permit, by persons other than the manufacturers of beverages containing less than one-half of 1 per centum of alcohol by volume, and sold to such manufacturers for conversion into such beverages. The alcohol removed from such liquid, if evaporated and not condensed and saved, shall not be subject to tax; if saved, it shall be subject to the same law as other alcoholic liquors. Credit shall be allowed on the tax due on any alcohol so saved to the amount of any tax paid upon distilled spirits or brandy used in the fortification of the liquor from which the same is saved.

When fortified wines are made and used for the production of nonbeverage alcohol, and dealcoholized wines containing less than one-half of 1 per centum of alcohol by volume, no tax shall be assessed or paid on the spirits used in such fortification, and such dealcoholized wines produced under the provisions of this Act, whether carbonated or not, shall not be subject to the tax on artificially carbonated or sparkling wines, but shall be subject to the tax on still wines only.

In any case where the manufacturer is charged with manufacturing or selling for beverage purposes any malt, vinous, or fermented liquids containing one-half of 1 per centum or more of alcohol by volume, or in any case where the manufacturer, having been permitted by the commissioner to develop a liquid such as ale, beer, porter, or wine containing more than one-half of 1 per centum of alcohol by volume in the manner and for the purpose herein provided, is charged with such failure to reduce the alcoholic content of any such liquid below such one-half of 1 per centum before withdrawing the same from the factory, then in either such case the burden of proof shall be on such manufacturer to show that such liquid so manufactured, sold, or withdrawn contains less than one-half of 1 per centum of alcohol by volume. In any suit or proceeding involving the alcoholic content of any beverage, the reasonable expense of analysis of such beverage shall be taxed as costs in the case.

SEC. 38. The Commissioner of Internal Revenue and the Attorney General of the United States are hereby respectively authorized to appoint and employ such assistants, experts, clerks, and other employees in the District of Columbia or elsewhere, and to purchase such supplies and equipment as they may deem necessary for the enforcement of the provisions of this Act, but such assistants, experts, clerks, and other employees, except such executive officers as may

be appointed by the Commissioner or the Attorney General to have immediate direction of the enforcement of the provisions of this Act, and persons authorized to issue permits, and agents and inspectors in the field service. shall be appointed under the rules and regulations prescribed by the Civil Service Act: *Provided*, That the Commissioner and Attorney General in making such appointments shall give preference to those who have served in the military or naval service in the recent war, if otherwise qualified, and there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sum as may be required for the enforcement of this Act including personal services in the District of Columbia, and for the fiscal year ending June 30, 1920, there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$2,000,000 for the use of the Commissioner of Internal Revenue and \$100,000 for the use of the Department of Justice for the enforcement of the provisions of this Act, including personal services in the District of Columbia and necessary printing and binding.

SEC. 39. In all cases wherein the property of any citizen is proceeded against or wherein a judgment affecting it might be rendered, and the citizen is not the one who in person violated the provisions of the law, summons must be issued in due form and served personally, if said person is to be found within the jurisdiction of the court.

TITLE III

INDUSTRIAL ALCOHOL

SEC. 1. When used in this title—

The term "alcohol" means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, from whatever source or whatever processes produced.

The term "container" includes any receptacle, vessel, or form of package, tank, or conduit used or capable of use for holding, storing, transferring, or shipment of alcohol.

INDUSTRIAL ALCOHOL PLANTS AND WAREHOUSES

SEC. 2. Any person now producing alcohol shall, within thirty days after the passage of this Act, make application to the commissioner for registration of his industrial alcohol plant, and as soon thereafter as practicable the premises shall be bonded and permit may issue for the operation of such plant, and any person hereafter establishing a plant for the production of alcohol shall likewise before operation make application, file bond, and receive permit.

SEC. 3. Warehouses for the storage and distribution of alcohol to be used exclusively for other than beverage purposes may be established upon filing of application and bond, and issuance of permit at such places, either in connection with the manufacturing plant or elsewhere, as the commissioner may determine; and the entry and storage of alcohol therein, and the withdrawals of alcohol therefrom shall be made in such containers and by such means as the commissioner by regulation may prescribe.

SEC. 4. Alcohol produced at any registered industrial alcohol plant or stored in any bonded warehouse may be transferred under

regulations to any other registered industrial alcohol plant or bonded warehouse for any lawful purpose.

SEC. 5. Any tax imposed by law upon alcohol shall attach to such alcohol as soon as it is in existence as such, and all proprietors of industrial alcohol plants and bonded warehouses shall be jointly and severally liable for any and all taxes on any and all alcohol produced thereat or stored therein. Such taxes shall be a first lien on such alcohol and the premises and plant in which such alcohol is produced or stored, together with all improvements and appurtenances thereunto belonging or in any wise appertaining.

SEC. 6. Any distilled spirits produced and fit for beverage purposes remaining in any bonded warehouse on or before the date when the eighteenth amendment of the Constitution of the United States goes into effect, may, under regulations, be withdrawn therefrom either for denaturation at any bonded denaturing plant or for deposit in a bonded warehouse established under this Act; and when so withdrawn, if not suitable as to proof, purity, or quality for other than beverage purposes, such distilled spirits shall be redistilled, purified, and changed in proof so as to render such spirits suitable for other purposes, and having been so treated may thereafter be denatured or sold in accordance with the provisions of this Act.

SEC. 7. Any distillery or bonded warehouse heretofore legally established may, upon filing application and bond and the granting of permit, be operated as an industrial alcohol plant or bonded warehouse under the provisions of this title and regulations made thereunder.

SEC. 8. Alcohol may be produced at any industrial alcohol plant established under the provisions of this title, from any raw materials or by any processes suitable for the production of alcohol, and, under regulations, may be used at any industrial alcohol plant or bonded warehouse or sold or disposed of for any lawful purpose, as in this Act provided.

SEC. 9. Industrial alcohol plants and bonded warehouses established under the provisions of this title shall be exempt from the provisions of sections 3154, 3244, 3258, 3259, 3260, 3263, 3264, 3266, 3267, 3268, 3269, 3271, 3273, 3274, 3275, 3279, 3280, 3283, 3284, 3285, 3286, 3287, 3288, 3289, 3290, 3291, 3292, 3293, 3294, 3295, 3302, 3303, 3307, 3308, 3309, 3310, 3311, 3312, 3313, 3314, and 3327 of the Revised Statutes; sections 48 to 60, inclusive, and sections 62 and 67 of the Act of August 27, 1894 (Twenty-eighth Statutes, pages 563 to 568), and from such other provisions of existing laws relating to distilleries and bonded warehouses as may, by regulations, be declared inapplicable to industrial alcohol plants and bonded warehouses established under this Act.

Regulations may be made embodying any provision of the sections above enumerated.

TAX-FREE ALCOHOL

SEC. 10. Upon the filing of application and bond and issuance of permit denaturing plants may be established upon the premises of any industrial alcohol plant, or elsewhere, and shall be used exclusively for the denaturation of alcohol by the admixture of such denaturing materials as shall render the alcohol, or any compound in

which it is authorized to be used, unfit for use as an intoxicating beverage.

Alcohol lawfully denatured may, under regulations, be sold free of tax either for domestic use or for export.

Nothing in this Act shall be construed to require manufacturers of distilled vinegar to raise the proof of any alcohol used in such manufacture or to denature the same.

SEC. 11. Alcohol produced at any industrial alcohol plant or stored in any bonded warehouse may, under regulations, be withdrawn tax free as provided by existing law from such plant or warehouse for transfer to any denaturing plant for denaturation, or may, under regulations, before or after denaturation, be removed from any such plant or warehouse for any lawful tax-free purpose.

Spirits of less proof than one hundred and sixty degrees may, under regulations, be deemed to be alcohol for the purpose of denaturation, under the provisions of this title.

Alcohol may be withdrawn, under regulations, from any industrial plant or bonded warehouse tax free by the United States or any governmental agency thereof, or by the several States and Territories or any municipal subdivision thereof or by the District of Columbia, or for the use of any scientific university or college of learning, any laboratory for use exclusively in scientific research, or for use in any hospital or sanatorium.

But any person permitted to obtain alcohol tax free, except the United States and the several States and Territories and subdivisions thereof, and the District of Columbia, shall first apply for and secure a permit to purchase the same and give the bonds prescribed under title II of this Act, but alcohol withdrawn for nonbeverage purposes for use of the United States and the several States, Territories and subdivisions hereof, and the District of Columbia may be purchased and withdrawn subject only to such regulations as may be prescribed.

GENERAL PROVISIONS

SEC. 12. The penalties provided in this title shall be in addition to any penalties provided in title 2 of this Act, unless expressly otherwise therein provided.

SEC. 13. The commissioner shall from time to time issue regulations respecting the establishment, bonding, and operation of industrial alcohol plants, denaturing plants, and bonded warehouses authorized herein, and the distribution, sale, export, and use of alcohol which may be necessary, advisable, or proper, to secure the revenue, to prevent diversion of the alcohol to illegal uses, and to place the nonbeverage alcohol industry and other industries using such alcohol as a chemical raw material or for other lawful purpose upon the highest possible plane of scientific and commercial efficiency consistent with the interests of the Government, and which shall insure an ample supply of such alcohol and promote its use in scientific research and the development of fuels, dyes, and other lawful products.

SEC. 14. Whenever any alcohol is lost by evaporation or other shrinkage, leakage, casualty, or unavoidable cause during distillation, redistillation, denaturation, withdrawal, piping, shipment, ware-

housing, storage, packing, transfer, or recovery, of any such alcohol the commissioner may remit or refund any tax incurred under existing law upon such alcohol, provided he is satisfied that the alcohol has not been diverted to any illegal use: *Provided, also*, That such allowance shall not be granted if the person claiming same is indemnified against such loss by a valid claim of insurance.

SEC. 15. Whoever operates an industrial alcohol plant or a denaturing plant without complying with the provisions of this title and lawful regulations made thereunder, or whoever withdraws or attempts to withdraw or secure tax free any alcohol subject to tax, or whoever otherwise violates any of the provisions of this title or of regulations lawfully made thereunder shall be liable, for the first offense, to a penalty of not exceeding \$1,000, or imprisonment not exceeding thirty days, or both, and for a second or cognate offense to a penalty of not less than \$100 nor more than \$10,000, and to imprisonment of not less than thirty days nor more than one year. It shall be lawful for the commissioner in all cases of second or cognate offense to refuse to issue for a period of one year a permit for the manufacture or use of alcohol upon the premises of any person responsible in any degree for the violation.

SEC. 16. Any tax payable upon alcohol under existing law may be collected either by assessment or by stamp as regulations shall provide; and if by stamp, regulations shall issue prescribing the kind of stamp to be used and the manner of affixing and canceling the same.

SEC. 17. When any property is seized for violation of this title it may be released to the claimant or to any intervening party, in the discretion of the commissioner, on a bond given and approved.

SEC. 18. All administrative provisions of internal-revenue law, including those relating to assessment, collection, abatement, and refund of taxes and penalties, and the seizure and forfeiture of property, are made applicable to this title in so far as they are not inconsistent with the provisions thereof.

SEC. 19. All prior statutes relating to alcohol as defined in this title are hereby repealed in so far as they are inconsistent with the provisions of this title.

SEC. 20. That it shall be unlawful to import or introduce into the Canal Zone, or to manufacture, sell, give away, dispose of, transport, or have in one's possession or under one's control within the Canal Zone, any alcoholic, fermented, brewed, distilled, vinous, malt, or spirituous liquors, except for sacramental, scientific, pharmaceutical, industrial, or medicinal purposes, under regulations to be made by the President, and any such liquors within the Canal Zone in violation hereof shall be forfeited to the United States and seized: *Provided*, That this section shall not apply to liquor in transit through the Panama Canal or on the Panama Railroad.

That each and every violation of any of the provisions of this section shall be punished by a fine of not more than \$1,000 or imprisonment not exceeding six months for a first offense, and by a fine not less than \$200 nor more than \$2,000 and imprisonment not less than one month nor more than five years for a second or subsequent offense.

That all offenses heretofore committed within the Canal Zone may

be prosecuted and all penalties therefor enforced in the same manner and to the same extent as if this Act had not been passed.

SEC. 21. Titles I and III and sections 1, 27, 37, and 38 of title II of this Act shall take effect and be in force from and after the passage and approval of the Act. The other sections of title II shall take effect and be in force from and after the date when the eighteenth amendment of the Constitution of the United States goes into effect.

F. H. GILLET,
Speaker of the House of Representatives.
 THOS. R. MARSHALL,
Vice President of the United States and
President of the Senate.

IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES,
October 27, 1919.

The President of the United States having returned to the House of Representatives, in which it originated, the bill (H. R. 6810) entitled "An Act to prohibit intoxicating beverages, and to regulate the manufacture, production, use, and sale of high-proof spirits for other than beverage purposes, and to insure an ample supply of alcohol and promote its use in scientific research and in the development of fuel, dye, and other lawful industries," with his objections thereto, the House proceeded in pursuance of the Constitution to reconsider the same; and

Resolved, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

Attest:

WM. TYLER PAGE,
Clerk.

IN THE SENATE OF THE UNITED STATES,
Legislative Day, October 22, 1919, Calendar Day, October 28, 1919.

The Senate having proceeded to reconsider the bill (H. R. 6810) "An Act to prohibit intoxicating beverages, and to regulate the manufacture, production, use, and sale of high-proof spirits for other than beverage purposes, and to insure an ample supply of alcohol and promote its use in scientific research and in the development of fuel, dye, and other lawful industries," returned by the President of the United States to the House of Representatives, in which it originated, with his objections, and passed by the House on a reconsideration of the same, it was

Resolved, That the said bill pass, two-thirds of the Senators present having voted in the affirmative.

Attest:

GEORGE A. SANDERSON,
Secretary.

(41 Stat. L. Pt. 1, p. 305.)

An Act Supplemental to the National Prohibition Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the words "person," "commissioner," "application," "permit," "regulation,"

and "liquor," and the phrase "intoxicating liquor," when used in this Act, shall have the same meaning as they have in Title II of the National Prohibition Act. ,

SEC. 2. That only spirituous and vinous liquor may be prescribed for medicinal purposes, and all permits to prescribe and prescriptions for any other liquor shall be void. No physician shall prescribe, nor shall any person sell or furnish on any prescription, any vinous liquor that contains more than 24 per centum of alcohol by volume, nor shall anyone prescribe or sell or furnish on any prescription more than one-fourth of one gallon of vinous liquor, or any such vinous or spirituous liquor that contains separately or in the aggregate more than one-half pint of alcohol, for use by any person within any period of ten days. No physician shall be furnished with more than one hundred prescription blanks for use in any period of ninety days, nor shall any physician issue more than that number of prescriptions within any such period unless on application therefor he shall make it clearly apparent to the commissioner that for some extraordinary reason a larger amount is necessary, whereupon the necessary additional blanks may be furnished him. But this provision shall not be construed to limit the sale of any article the manufacture of which is authorized under section 4, Title II, of the National Prohibition Act.

If the commissioner shall find after hearing, upon notice as required in section 5 of Title II of the National Prohibition Act, that any article enumerated in subdivisions b, c, d, or e of section 4 of Title II of said National Prohibition Act is being used as a beverage, or for intoxicating beverage purposes, he may require a change of formula of such article and in the event that such change is not made within a time to be named by the commissioner he may cancel the permit for the manufacture of such article unless it is made clearly to appear to the commissioner that such use can only occur in rare or exceptional instances, but such action of the commissioner may by appropriate proceedings in a court of equity be reviewed, as provided for in section 5, Title II, of said National Prohibition Act: *Provided*, That no change of formula shall be required and no permit to manufacture any article under subdivision (E), section 4, Title II of the National Prohibition Act shall be revoked unless the sale or use of such article is substantially increased in the community by reason of its use as a beverage or for intoxicating beverage purposes.

No spirituous liquor shall be imported into the United States, nor shall any permit be granted authorizing the manufacture of any spirituous liquor, save alcohol, until the amount of such liquor now in distilleries or other bonded warehouses shall have been reduced to a quantity that in the opinion of the commissioner will, with liquor that may thereafter be manufactured and imported, be sufficient to supply the current need thereafter for all nonbeverage uses: *Provided*, That no vinous liquor shall be imported into the United States unless it is made to appear to the commissioner that vinous liquor for such nonbeverage use produced in the United States is not sufficient to meet such nonbeverage needs: *Provided further*, That this provision against importation shall not apply to shipments en route to the United States at the time of the passage of this Act: *And provided further*, That the commissioner may

authorize the return to the United States under such regulations and conditions as he may prescribe any distilled spirits of American production exported free of tax and reimported in original packages in which exported and consigned for redeposit in the distillery bonded warehouse from which originally removed.

SEC. 3. That this Act and the National Prohibition Act shall apply not only to the United States but to all territory subject to its jurisdiction, including the Territory of Hawaii and the Virgin Islands; and jurisdiction is conferred on the courts of the Territory of Hawaii and the Virgin Islands to enforce this Act and the National Prohibition Act in such Territory and Islands.

SEC. 4. That regulations may be made by the commissioner to carry into effect the provisions of this Act. Any person who violates any of the provisions of this Act shall be subject to the penalties provided for in the National Prohibition Act.

SEC. 5. That all laws in regard to the manufacture and taxation of and traffic in intoxicating liquor, and all penalties for violations of such laws that were in force when the National Prohibition Act was enacted, shall be and continue in force, as to both beverage and nonbeverage liquor, except such provisions of such laws as are directly in conflict with any provision of the National Prohibition Act or of this Act; but if any act is a violation of any of such laws and also of the National Prohibition Act or of this Act, a conviction for such act or offense under one shall be a bar to prosecution therefor under the other. All taxes and tax penalties provided for in section 35 of Title II of the National Prohibition Act shall be assessed and collected in the same manner and by the same procedure as other taxes on the manufacture of or traffic in liquor.

If distilled spirits upon which the internal-revenue tax has not been paid are lost by theft, accidental fire, or other casualty while in possession of a common carrier subject to the Transportation Act of 1920 or the Merchant Marine Act, 1920, or if lost by theft from a distillery or other bonded warehouse, and it shall be made to appear to the commissioner that such losses did not occur as the result of negligence, connivance, collusion, or fraud on the part of the owner or person legally accountable for such distilled spirits, no tax shall be assessed or collected upon the distilled spirits so lost, nor shall any tax penalty be imposed or collected by reason of such loss, but the exemption from the tax and penalty shall only be allowed to the extent that the claimant is not indemnified against or recompensed for such loss. This provision shall apply to any claim for taxes or tax penalties that may have accrued since the passage of the National Prohibition Act or that may accrue hereafter. Nothing in this section shall be construed as in any manner limiting or restricting the provisions of Title III of the National Prohibition Act.

SEC. 6. That any officer, agent, or employee of the United States engaged in the enforcement of this Act, or the National Prohibition Act, or any other law of the United States, who shall search any private dwelling as defined in the National Prohibition Act, and occupied as such dwelling, without a warrant directing such search, or who while so engaged shall without a search warrant maliciously and without reasonable cause search any other building or property,

shall be guilty of a misdemeanor and upon conviction thereof shall be fined for a first offense not more than \$1,000, and for a subsequent offense not more than \$1,000 or imprisoned not more than one year, or both such fine and imprisonment.

Whoever not being an officer, agent, or employee of the United States shall falsely represent himself to be such officer, agent, or employee and in such assumed character shall arrest or detain any person, or shall in any manner search the person, buildings, or other property of any person, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1,000, or imprisoned for not more than one year, or by both such fine and imprisonment.

Approved, November 23, 1921 (42 Stat. L. 222, *et seq.*).

SEARCH WARRANTS

[Extract from Espionage Act]

TITLE XI

SEARCH WARRANTS

SECTION 1. A search warrant authorized by this title may be issued by a judge of a United States district court, or by a judge of a State or Territorial court of record, or by a United States commissioner for the district wherein the property sought is located.

SEC. 2. A search warrant may be issued under this title upon either of the following grounds:

1. When the property was stolen or embezzled in violation of a law of the United States; in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or from any person in whose possession it may be.

2. When the property was used as the means of committing a felony; in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was used in the commission of the offense, or from any person in whose possession it may be.

3. When the property, or any paper, is possessed, controlled, or used in violation of section twenty-two of this title; in which case it may be taken on the warrant from the person violating said section, or from any person in whose possession it may be, or from any house or other place in which it is concealed.

SEC. 3. A search warrant can not be issued but upon probable cause, supported by affidavit, naming or describing the person and particularly describing the property and the place to be searched.

SEC. 4. The judge or commissioner must, before issuing the warrant, examine on oath the complainant and any witness he may produce, and require their affidavits or take their depositions in writing and cause them to be subscribed by the parties making them.

SEC. 5. The affidavits or depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

SEC. 6. If the judge or commissioner is thereupon satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence, he must issue a search warrant, signed by him with his name of office, to a civil officer of the United States duly authorized to enforce or assist in enforcing any law thereof, or to a person so duly authorized by the President of the United States, stating the particular grounds or probable cause for its issue and the names of the persons whose affidavits have been taken in support thereof, and commanding him forthwith to search the person or place named, for the property specified, and to bring it before the judge or commissioner.

SEC. 7. A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

SEC. 8. The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

SEC. 9. He may break open any outer or inner door or window of a house for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation.

SEC. 10. The judge or commissioner must insert a direction in the warrant that it be served in the daytime, unless the affidavits are positive that the property is on the person or in the place to be searched, in which case he may insert a direction that it be served at any time of the day or night.

SEC. 11. A search warrant must be executed and returned to the judge or commissioner who issued it within 10 days after its date; after the expiration of this time the warrant, unless executed, is void.

SEC. 12. When the officer takes property under the warrant, he must give a copy of the warrant together with a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or, in the absence of any person, he must leave it in the place where he found the property.

SEC. 13. The officer must forthwith return the warrant to the judge or commissioner and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory and taken before the judge or commissioner at the time, to the following effect: "I, R. S., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

SEC. 14. The judge or commissioner must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant.

SEC. 15. If the grounds on which the warrant was issued be controverted, the judge or commissioner must proceed to take testimony in relation thereto, and the testimony of each witness must be reduced to writing and subscribed by each witness.

SEC. 16. If it appears that the property or paper taken is not the same as that described in the warrant or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the judge or commissioner must cause it to be restored to the person from whom it was taken; but if it appears that the property or paper taken is the same as that described in the warrant and that there is probable cause for believing the existence of the grounds on which the warrant was issued, then the judge or commissioner shall order the same retained in the custody of the person seizing it or to be otherwise disposed of according to law.

SEC. 17. The judge or commissioner must annex the affidavits, search warrant, return, inventory, and evidence, and if he has not power to inquire into the offense in respect to which the warrant was issued he must at once file the same, together with a copy of the record of his proceedings, with the clerk of the court having power to so inquire.

SEC. 18. Whoever shall knowingly and willfully obstruct, resist, or oppose any such officer or person in serving or attempting to serve or execute any such search warrant, or shall assault, beat, or wound any such officer or person, knowing him to be an officer or person so authorized, shall be fined not more than \$1,000 or imprisoned not more than two years.

SEC. 19. Sections one hundred and twenty-five and one hundred and twenty-six of the Criminal Code of the United States shall apply to and embrace all persons making oath or affirmation or procuring the same under the provisions of this title, and such persons shall be subject to all the pains and penalties of said sections.

SEC. 20. A person who maliciously and without probable cause procures a search warrant to be issued and executed shall be fined not more than \$1,000 or imprisoned not more than one year.

SEC. 21. An officer who in executing a search warrant willfully exceeds his authority, or exercises it with unnecessary severity, shall be fined not more than \$1,000 or imprisoned not more than one year.

SEC. 22. Whoever, in aid of any foreign Government, shall knowingly and willfully have possession of or control over any property or papers designed or intended for use or which is used as the means of violating any penal statute, or any of the rights or obligations of the United States under any treaty or the law of nations, shall be fined not more than \$1,000 or imprisoned not more than two years, or both.

SEC. 23. Nothing contained in this title shall be held to repeal or impair any existing provisions of law regulating search and the issue of search warrants.

(Act of June 15, 1917, 40 Stat. L., pt. 1, p. 228, *et. seq.*)

BRIBERY

[Extract from Act making appropriations for the District of Columbia for year ending June 30, 1903]

That hereafter every person who directly or indirectly takes, receives, or agrees to receive any money, property, or other valuable consideration whatever from any person for giving, procuring, or aiding to give or procure any office, place, or promotion in office from the Commissioners of the District of Columbia, or from any officer under them, and every person who, directly or indirectly, offers to give, or gives any money, property, or other valuable consideration whatever for the procuring or aiding to procure any such office, place, or promotion in office shall be deemed guilty of a misdemeanor, and on conviction thereof in the police court shall be punished by a fine not exceeding one thousand dollars or imprisonment in the jail for not more than twelve months, or both, in the discretion of the court.

Hereafter the several provisions of the Act approved February twentieth, eighteen hundred and ninety-six, entitled "An Act to amend an Act entitled 'An Act to punish false swearing before trial boards of the Metropolitan police force and fire department of the District of Columbia, and for other purposes,' approved May eleventh, eighteen hundred and ninety-two," shall be applicable to and enforceable in any investigation or examination of any municipal matter by the Commissioners of the District of Columbia, as well as to the proceedings before the trial boards named in said Act; and said Commissioners are, and each of them is hereby, authorized to administer oaths to witnesses summoned in any such investigation or examination aforesaid.

Approved, July 1, 1902 (32 St. L. pt. 1, p. 591).

REGULATION OF BANKING

An Act Regulating corporations doing a banking business in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no corporation that is not now engaged in the business of banking in the District of Columbia shall, after the passage of this Act, be permitted to enter upon said business in the said District, nor shall any corporation now or hereafter engaged in the business of banking be permitted to establish branch banks in said District, until after it shall have secured the approval and consent of the Comptroller of the Currency; and each one of the officers of such corporation so offending shall be punished by a fine not exceeding \$1,000 or imprisonment not exceeding one year, or by both fine and imprisonment, in the discretion of the court.

Approved, April 26, 1922 (42 St. L. pt. 1, p. 500).

NARCOTIC ACT

An Act To provide for the registration of, with collectors of internal revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, or preparations, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That on and after the first day of March, nineteen hundred and fifteen, every person who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away opium or coca leaves or any compound, manufacture, salt, derivative, or preparation thereof, shall register with the collector of internal revenue of the district his name or style, place of business, and place or places where such business is to be carried on: *Provided*, That the office, or if none, then the residence of any person shall be considered for the purposes of this Act to be his place of business. At the time of such registry and on or before the first day of July, annually thereafter, every person who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away any of the aforesaid drugs shall pay to the said collector a special tax at the rate of \$1 per annum: *Provided*, That no employee of any person who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away any of the aforesaid drugs, acting within the scope of his employment, shall be required to register or to pay the special tax provided by this section: *Provided further*, That the person who employs him shall have registered and paid the special tax as required by this section: *Provided further*, That officers of the United States Government who are lawfully engaged in making purchases of the above-named drugs for the various departments of the Army and Navy, the Public Health Service, and for Government hospitals and prisons, and officers of any State government, or of any county or municipality therein, who are lawfully engaged in making purchases of the above-named drugs for State, county, or municipal hospitals or prisons, and officials of any Territory or insular possession or the District of Columbia or of the United States who are lawfully engaged in making purchases of the above-named drugs for hospitals or prisons therein shall not be required to register and pay the special tax as herein required.

It shall be unlawful for any person required to register under the terms of this Act to produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away any of the aforesaid drugs without having registered and paid the special tax provided for in this section.

That the word "person" as used in this Act shall be construed to mean and include a partnership, association, company, or corporation, as well as a natural person; and all provisions of existing law relating to special taxes, so far as applicable, including the provisions of section thirty-two hundred and forty of the Revised Statutes of the United States are hereby extended to the special tax herein imposed.

That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all needful rules and regulations for carrying the provisions of this Act into effect.

SEC. 2. That it shall be unlawful for any person to sell, barter, exchange, or give away any of the aforesaid drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue. Every person who shall accept any such order, and in pursuance thereof shall sell, barter, exchange, or give away any of the aforesaid drugs, shall preserve such order for a period of two years in such a way as to be readily accessible to inspection by any officer, agent, or employee of the Treasury Department duly authorized for that purpose, and the State, Territorial, District, municipal, and insular officials named in section five of this Act. Every person who shall give an order as herein provided to any other person for any of the aforesaid drugs shall, at or before the time of giving such order, make or cause to be made a duplicate thereof on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue, and in case of the acceptance of such order, shall preserve such duplicate for said period of two years in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials hereinbefore mentioned. Nothing contained in this section shall apply—

(a) To the dispensing or distribution of any of the aforesaid drugs, to a patient by a physician, dentist, or veterinary surgeon registered under this Act in the course of his professional practice only: *Provided*, That such physician, dentist, or veterinary surgeon shall keep a record of all such drugs dispensed or distributed, showing the amount dispensed or distributed, the date, and the name and address of the patient to whom such drugs are dispensed or distributed, except such as may be dispensed or distributed to a patient upon whom such physician, dentist or veterinary surgeon shall personally attend; and such record shall be kept for a period of two years from the date of dispensing or distributing such drugs, subject to inspection, as provided in this Act.

(b) To the sale, dispensing, or distribution of any of the aforesaid drugs by a dealer to a consumer under and in pursuance of a written prescription issued by a physician, dentist, or veterinary surgeon registered under this Act: *Provided, however*, That such prescription shall be dated as of the day on which signed and shall be signed by the physician, dentist, or veterinary surgeon who shall have issued the same: *And provided further*, That such dealer shall preserve such prescription for a period of two years from the day on which such prescription is filled in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials hereinbefore mentioned.

(c) To the sale, exportation, shipment, or delivery of any of the aforesaid drugs by any person within the United States or any territory or the District of Columbia or any of the insular possessions of the United States to any person in any foreign country, regulating their entry in accordance with such regulations for importation thereof into such foreign country as are prescribed by said country,

such regulations to be promulgated from time to time by the Secretary of State of the United States.

(d) To the sale, barter, exchange, or giving away of any of the aforesaid drugs to any officer of the United States Government or of any State, territorial, district, county, or municipal or insular government lawfully engaged in making purchases thereof for the various departments of the Army and Navy, the Public Health Service, and for Government, State, territorial district, county, or municipal or insular hospitals or prisons.

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall cause suitable forms to be prepared for the purposes above mentioned, and shall cause the same to be distributed to collectors of internal revenue for sale by them to those persons who shall have registered and paid the special tax as required by section one of this Act in their districts, respectively; and no collector shall sell any of such forms to any persons other than a person who has registered and paid the special tax as required by section one of this Act in his district. The price at which such forms shall be sold by said collectors shall be fixed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, but shall not exceed the sum of \$1 per hundred. Every collector shall keep an account of the number of such forms sold by him, the names of the purchasers, and the number of such forms sold to each of such purchasers. Whenever any collector shall sell any of such forms, he shall cause the name of the purchaser thereof to be plainly written or stamped thereon before delivering the same; and no person other than such purchaser shall use any of said forms bearing the name of such purchaser for the purpose of procuring any of the aforesaid drugs, or furnish any of the forms bearing the name of such purchaser to any person with intent thereby to procure the shipment or delivery of any of the aforesaid drugs. It shall be unlawful for any person to obtain by means of said order forms any of the aforesaid drugs for any purpose other than the use, sale, or distribution thereof by him in the conduct of a lawful business in said drugs or in the legitimate practice of his profession.

The provisions of this Act shall apply to the United States, the District of Columbia, the Territory of Alaska, the Territory of Hawaii, the insular possessions of the United States, and the Canal Zone. In Porto Rico and the Philippine Islands the administration of this Act, the collection of the said special tax, and the issuance of the order forms specified in section two shall be performed by the appropriate internal-revenue officers of those governments, and all revenues collected hereunder in Porto Rico and the Philippine Islands shall accrue intact to the general governments thereof, respectively. The courts of first instance in the Philippine Islands shall possess and exercise jurisdiction in all cases arising under this Act in said islands. The President is authorized and directed to issue such Executive orders as will carry into effect in the Canal Zone the intent and purpose of this Act by providing for the registration and the imposition of a special tax upon all persons in the Canal Zone who produce, import, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, or preparations.

SEC. 3. That any person who shall be registered in any internal-revenue district under the provisions of section one of this Act shall, whenever required so to do by the collector of the district, render to the said collector a true and correct statement or return, verified by affidavit, setting forth the quantity of the aforesaid drugs received by him in said internal-revenue district during such period immediately preceding the demand of the collector, not exceeding three months, as the said collector may fix and determine; the names of the persons from whom the said drugs were received; the quantity in each instance received from each of such persons, and the date when received.

SEC. 4. That it shall be unlawful for any person who shall not have been registered and paid the special tax as required by section one of this Act to send, ship, carry, or deliver any of the aforesaid drugs from any State or Territory or the District of Columbia, or any insular possession of the United States, to any person in any other State or Territory or the District of Columbia or any insular possession of the United States: *Provided*, That nothing contained in this section shall apply to common carriers engaged in transporting the aforesaid drugs, or to any employee acting within the scope of his employment, of any person who shall have registered and paid the special tax as required by section one of this Act, or to any person who shall deliver any such drug which has been prescribed or dispensed by a physician, dentist, or veterinarian required to register under the terms of this Act, who has been employed to prescribe for the particular patient receiving such drug, or to any United States, State, county, municipal, District, Territorial, or insular officer or official acting within the scope of his official duties.

SEC. 5. That the duplicate-order forms and the prescriptions required to be preserved under the provisions of section two of this Act, and the statements or returns filed in the office of the collector of the district, under the provisions of section three of this Act, shall be open to inspection by officers, agents, and employees of the Treasury Department duly authorized for that purpose; and such officials of any State or Territory, or of any organized municipality therein, or of the District of Columbia, or any insular possession of the United States, as shall be charged with the enforcement of any law or municipal ordinance regulating the sale, prescribing, dispensing, dealing in, or distribution of the aforesaid drugs. Each collector of internal revenue is hereby authorized to furnish, upon written request, certified copies of any of the said statements or returns filed in his office to any of such officials of any State or Territory or organized municipality therein, or the District of Columbia, or any insular possession of the United States, as shall be entitled to inspect the said statements or returns filed in the office of the said collector, upon the payment of a fee of \$1 for each one hundred words or fraction thereof in the copy or copies so requested. Any person who shall disclose the information contained in the said statements or returns or in the said duplicate-order forms, except as herein expressly provided, and except for the purpose of enforcing the provisions of this Act, or for the purpose of enforcing any law of any State or Territory or the District of Columbia, or any insular possession of the United States, or ordinance of any organized municipality therein,

regulating the sale, prescribing, dispensing, dealing in, or distribution of the aforesaid drugs, shall, on conviction, be fined or imprisoned as provided by section nine of this Act. And collectors of internal revenue are hereby authorized to furnish upon written request, to any person, a certified copy of the names of any or all persons who may be listed in their respective collection districts as special-tax payers under the provisions of this Act, upon payment of a fee of \$1 for each one hundred names or fraction thereof in the copy so requested.

SEC. 6. That the provisions of this Act shall not be construed to apply to the sale, distribution, giving away, dispensing, or possession of preparations and remedies which do not contain more than two grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codeine, or any salt or derivative of any of them in one fluid ounce, or, if a solid or semisolid preparation, in one avoirdupois ounce; or to liniments, ointments, or other preparations which are prepared for external use only, except liniments, ointments, and other preparations which contain cocaine or any of its salts or alpha or beta eucaine or any of their salts or any synthetic substitute for them: *Provided*, That such remedies and preparations are sold, distributed, given away, dispensed, or possessed as medicines and not for the purpose of evading the intentions and provisions of this Act. The provisions of this Act shall not apply to decocainized coca leaves or preparations made therefrom, or to other preparations of coca leaves which do not contain cocaine.

SEC. 7. That all laws relating to the assessment, collection, remission, and refund of internal-revenue taxes, including section thirty-two hundred and twenty-nine of the Revised Statutes of the United States, so far as applicable to and not inconsistent with the provisions of this Act, are hereby extended and made applicable to the special taxes imposed by this Act.

SEC. 8. That it shall be unlawful for any person not registered under the provisions of this Act, and who has not paid the special tax provided for by this Act, to have in his possession or under his control any of the aforesaid drugs; and such possession or control shall be presumptive evidence of a violation of this section, and also of a violation of the provisions of section one of this Act: *Provided*, That this section shall not apply to any employee of a registered person, or to a nurse under the supervision of a physician, dentist, or veterinary surgeon registered under this Act, having such possession or control by virtue of his employment or occupation and not on his own account; or to the possession of any of the aforesaid drugs which has or have been prescribed in good faith by a physician, dentist, or veterinary surgeon registered under this Act; or to any United States, State, county, municipal, District, Territorial, or insular officer or official who has possession of any said drugs, by reason of his official duties, or to a warehouseman holding possession for a person registered and who has paid the taxes under this Act; or to common carriers engaged in transporting such drugs: *Provided further*, That it shall not be necessary to negative any of the aforesaid exemptions in any complaint, information, indictment, or other

writ or proceeding laid or brought under this Act; and the burden of proof of any such exemption shall be upon the defendant.

SEC. 9. That any person who violates or fails to comply with any of the requirements of this Act shall, on conviction, be fined not more than \$2,000 or be imprisoned not more than five years, or both, in the discretion of the court.

SEC. 10. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to appoint such agents, deputy collectors, inspectors, chemists, assistant chemists, clerks, and messengers in the field and in the Bureau of Internal Revenue in the District of Columbia as may be necessary to enforce the provisions of this Act.

SEC. 11. That the sum of \$150,000, or so much thereof as may be necessary, be, and hereby is, appropriated, out of any moneys in the Treasury not otherwise appropriated, for the purpose of carrying into effect the provisions of this Act.

SEC. 12. That nothing contained in this Act shall be construed to impair, alter, amend, or repeal any of the provisions of the Act of Congress approved June thirtieth, nineteen hundred and six, entitled "An Act for preventing the manufacture, sale, or transportation of adulterated or misbranded, or poisonous, or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes," and any amendment thereof, or of the Act approved February ninth, nineteen hundred and nine, entitled "An Act to prohibit the importation and use of opium for other than medicinal purposes," and any amendment thereof.

Approved, December 17, 1914 (38 St. L., pt. 1, p. 785).

JURISDICTION OF BAWDY HOUSE AND AFFRAYS

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the police court of the District of Columbia shall have jurisdiction, concurrently with the Supreme Court of the District of Columbia, of affrays and the keeping of a bawdy or disorderly house, and any person convicted of such an offense shall be punished by a fine not exceeding five hundred dollars or imprisonment not exceeding one year, or both.

SEC. 2. That said police court shall also have concurrent jurisdiction with said supreme court of threats to do bodily harm, and any person convicted of such offense shall be required to give bond to keep the peace for a period not exceeding six months, and in default of bond may be sentenced to imprisonment not exceeding six months.

Approved July 16, 1912 (37 Stat. L. pt. 1, p. 192).

BAD CHECK LAW

An Act Regulating the issuance of checks, drafts, and orders for the payment of money within the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person

within the District of Columbia who, with intent to defraud, shall make, draw, utter, or deliver any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time of such making, drawing, uttering, or delivering that the maker or drawer has not sufficient funds in or credit with such bank or other depository for the payment of such check, draft, or order in full upon its presentation, shall be guilty of a misdemeanor and punishable by imprisonment for not more than one year, or be fined not more than \$1,000, or both. As against the maker or drawer thereof the making, drawing, uttering, or delivering by such maker or drawer of a check, draft, or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in its possession or control, shall be prima facie evidence of the intent to defraud and of knowledge of insufficient funds in or credit with such bank or other depository, provided such maker or drawer shall not have paid the holder thereof the amount due thereon, together with the amount of protest fees, if any, within five days after receiving notice in person, or writing, that such draft, or order, has not been paid. The word "credit," as used herein, shall be construed to mean arrangement or understanding, express or implied, with the bank or other depository for the payment of such check, draft, or order.

Approved July 16, 1912 (37 Stat. L., pt. 1, p. 192).

WHITE SLAVE TRAFFIC ACT

An Act To further regulate interstate and foreign commerce by prohibiting the transportation therein for immoral purposes of women and girls, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the term "interstate commerce," as used in this Act, shall include transportation from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, and the term "foreign commerce," as used in this Act, shall include transportation from any State or Territory or the District of Columbia to any foreign country and from any foreign country to any State or Territory or the District of Columbia.

SEC. 2. That any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any Territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any

other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in any Territory or the District of Columbia, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court.

SEC. 3. That any person who shall knowingly persuade, induce, entice, or coerce, or cause to be persuaded, induced, enticed, or coerced, or aid or assist in persuading, inducing, enticing, or coercing any woman or girl to go from one place to another in interstate or foreign commerce, or in any Territory or the District of Columbia, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and who shall thereby knowingly cause or aid or assist in causing such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or any Territory or the District of Columbia, shall be deemed guilty of a felony and on conviction thereof shall be punished by a fine of not more than five thousand dollars, or by imprisonment for a term not exceeding five years, or by both such fine and imprisonment, in the discretion of the court.

SEC. 4. That any person who shall knowingly persuade, induce, entice, or coerce any woman or girl under the age of eighteen years from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, with the purpose and intent to induce or coerce her, or that she shall be induced or coerced to engage in prostitution or debauchery, or any other immoral practice, and shall in furtherance of such purpose knowingly induce or cause her to go and to be carried or transported as a passenger in interstate commerce upon the line or route of any common carrier or carriers, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine of not more than ten thousand dollars, or by imprisonment for a term not exceeding ten years, or by both such fine and imprisonment, in the discretion of the court.

SEC. 5. That any violation of any of the above sections two, three, and four shall be prosecuted in any court having jurisdiction of crimes within the district in which said violation was committed, or from, through, or into which any such woman or girl may have been carried or transported as a passenger in interstate or foreign commerce, or in any Territory or the District of Columbia, contrary to the provisions of any of said sections.

SEC. 6. That for the purpose of regulating and preventing the transportation in foreign commerce of alien women and girls for purposes of prostitution and debauchery, and in pursuance of and for the purpose of carrying out the terms of the agreement or project of arrangement for the suppression of the white-slave traffic, adopted

July twenty-fifth, nineteen hundred and two, for submission to their respective governments by the delegates of various powers represented at the Paris conference and confirmed by a formal agreement signed at Paris on May eighteenth, nineteen hundred and four, and adhered to by the United States on June sixth, nineteen hundred and eight, as shown by the proclamation of the President of the United States, dated June fifteenth, nineteen hundred and eight, the Commissioner-General of Immigration is hereby designated as the authority of the United States to receive and centralize information concerning the procurement of alien women and girls with a view to their debauchery, and to exercise supervision over such alien women and girls, receive their declarations, establish their identity, and ascertain from them who induced them to leave their native countries, respectively; and it shall be the duty of said Commissioner-General of Immigration to receive and keep on file in his office the statements and declarations which may be made by such alien women and girls, and those which are hereinafter required pertaining to such alien women and girls engaged in prostitution or debauchery in this country, and to furnish receipts for such statements and declarations provided for in this act to the persons, respectively, making and filing them.

Every person who shall keep, maintain, control, support, or harbor in any house or place for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl within three years after she shall have entered the United States from any country, party to the said arrangement for the suppression of the white-slave traffic, shall file with the Commissioner-General of Immigration a statement in writing setting forth the name of such alien woman or girl, the place at which she is kept, and all facts as to the date of her entry into the United States, the port through which she entered, her age, nationality, and parentage, and concerning her procurement to come to this country within the knowledge of such person, and any person who shall fail within thirty days after such person shall commence to keep, maintain, control, support, or harbor in any house or place for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl within three years after she shall have entered the United States from any of the countries, party to the said arrangement for the suppression of the white-slave traffic, to file such statement concerning such alien woman or girl with the Commissioner-General of Immigration, or who shall knowingly and willfully state falsely or fail to disclose in such statement any fact within his knowledge or belief with reference to the age, nationality, or parentage of any such alien woman or girl, or concerning her procurement to come to this country, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not more than two thousand dollars, or by imprisonment for a term not exceeding two years, or by both such fine and imprisonment, in the discretion of the court.

In any prosecution brought under this section, if it appear that any such statement required is not on file in the office of the Commissioner-General of Immigration, the person whose duty it shall be to file such statement shall be presumed to have failed to file said statement, as herein required, unless such person or persons

shall prove otherwise. No person shall be excused from furnishing the statement, as required by this section, on the ground or for the reason that the statement so required by him, or the information therein contained, might tend to criminate him or subject him to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture under any law of the United States for or on account of any transaction, matter, or thing, concerning which he may truthfully report in such statement, as required by the provisions of this section.

SEC. 7. That the term "Territory," as used in this Act, shall include the district of Alaska, the insular possessions of the United States, and the Canal Zone. The word "person," as used in this Act, shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, companies, societies, and associations. When construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person, acting for or employed by any other person or by any corporation, company, society, or association within the scope of his employment or office, shall in every case be also deemed to be the act, omission, or failure of such other person, or of such company, corporation, society, or association, as well as that of the person himself.

SEC. 8. That this Act shall be known and referred to as the "White Slave Traffic Act."

Approved, June 25, 1910 (36 Stat. L., pt. 1, 825).

FRAUDULENT AUCTIONS

An Act To prevent fraud at public auctions in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter, excepting sales made under authority of law, it shall be unlawful in the District of Columbia for any person, firm, or corporation, either for himself or itself, or for another or for any firm, or corporation to sell or offer to sell at public auction any stock or stocks of merchandise, in whole or in part, without first obtaining from the Board of Commissioners of the District of Columbia a written or printed permit so to do; and the said Board of Commissioners shall not issue a permit for any such sale or sales until they are satisfied that neither fraud nor deception of any kind is contemplated or will be practiced, and that neither the sale, the reasons therefor nor the goods to be sold have not already been or will not thereafter be fraudulently or falsely advertised or in any wise whatsoever misrepresented.

SEC. 2. That every such permit shall be issued for a definite period of time not exceeding twelve months from its date of issue, and the date and hour of its expiration shall be stated in the permit, and before such permit shall be issued the applicant therefor shall pay to the District of Columbia, through its collector of taxes, such fee as the said Board of Commissioners may deem sufficient to reimburse the District of Columbia for the work and expense of issuing

the permit and gathering information concerning the applicant and his goods as the said board may deem prudent and best for the protection of the public, but which fee shall not exceed the sum of \$50. The application for the said permit shall be by verified petition, stating the name of the applicant, residence, street, and number of the proposed place of selling, and shall set forth in detail the goods to be sold and what statements or representations are to be made or advertised as to the same, and the length of time for which the permit is desired; and, if previously engaged in a like or similar business, to designate all the places where the same was conducted, and shall furnish to said commissioners such further evidence as shall be deemed necessary to establish the truth of the statements made in the said petition.

SEC. 3. That no permit as herein provided for shall be required for the sale of any wagon, carriage, automobile, mechanics' tools, used farming implements, live stock, including game, poultry (dressed or undressed), vegetables, fruits, melons, berries, flowers, or for the sale of used household furniture and effects when being sold at the residence of the housekeeper selling them.

SEC. 4. That the Board of Commissioners of the District of Columbia are hereby vested with authority to temporarily suspend the operation of the license herein provided for whenever they may believe that this Act or any part thereof, or regulations made in pursuance thereof, are about to be or are being violated, and they shall thereupon forthwith institute the appropriate proceeding in the police court in accordance with this Act, and in the event that the said violation results in a conviction, then and in that event the license shall be and become null and void, but in the event that the said proceeding shall terminate in favor of the defendant, then and in that event the suspension of said license shall be at an end, and the license shall thereupon be restored and be in full force and effect.

SEC. 5. That no person as herein provided for shall sell at public auction, from the first day of April until the thirtieth day of September, both inclusive, between the hours of seven o'clock in the evening and eight o'clock the following morning, nor from the first day of October until the thirtieth day of March, both inclusive, between the hours of six o'clock in the evening and eight o'clock in the morning, any jewelry, diamond, or other precious stone, watch, gold and silver ware, gold and silver plated ware, statuary, porcelains, bric-a-brac, or articles of vertu.

SEC. 6. That any person selling or offering for sale any property under the provisions of this Act shall, in describing the same, be truthful with respect to the character, quality, kind, and description of the same and which, for the purpose hereof, shall be considered as warranties, and any breach of the same shall be punishable by prosecution in the police court, as hereinbefore set forth.

SEC. 7. That all prosecutions under this Act shall be in the police court of the District of Columbia upon information by the corporation counsel or one of his assistants. Any person violating any of the provisions of this Act shall, upon conviction thereof, be punished by a fine of not less than \$10 nor more than \$200 or imprisonment of not more than sixty days or both, in the discretion of the court.

SEC. 8. That nothing herein shall be construed to excuse or release any person, firm, or corporation, or property from the payment of any occupational or property tax, or any other tax imposed or levied by law. Neither shall anything herein be construed to obviate the application of any fraudulent or false advertisement statute of the District of Columbia to any person who may violate the same; nor shall anything herein be construed to prevent any prosecution for fraud, deceit, or larceny by trick; nor to in any way estop or hinder any remedy at law or in equity, or the right to cancel or estop any unconscionable bargain or fraudulent transaction.

SEC. 9. That all Acts and parts of Acts inconsistent herewith are hereby repealed.

Act of September 8, 1916 (39 Stat. L., pt. 1, p. 846).

PAROLE OF UNITED STATES PRISONERS

An Act To parole United States prisoners, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every prisoner who has been or may hereafter be convicted of any offense against the United States, and is confined in execution of the judgment of such conviction in any United States penitentiary or prison, for a definite term or terms of over one year, whose record of conduct shows he has observed the rules of such institution, and who has served one-third of the total of the term or terms for which he was sentenced, may be released on parole as hereinafter provided.

SEC. 2. That the superintendent of prisons of the Department of Justice and the warden and physician of each United States penitentiary shall constitute a board of parole for such prison, which shall establish rules and regulations for its procedure subject to the approval of the Attorney-General. The chief clerk of such prison shall be clerk of said board of parole, and meetings shall be held at each prison as often as the regulations of such board shall provide: *Provided*, That in every case where a prison other than a United States penitentiary is used for the confinement of such prisoners it shall be the duty of the Attorney-General to designate the officers of said prison who, together with the superintendent of prisons, shall constitute such board for said prison.

SEC. 3. That if it shall appear to said board of parole from a report by the proper officers of such prison or upon application by a prisoner for release on parole, that there is a reasonable probability that such applicant will live and remain at liberty without violating the laws, and if in the opinion of the board such release is not incompatible with the welfare of society, then said board of parole may in its discretion authorize the release of such applicant on parole, and he shall be allowed to go on parole outside of said prison, and, in the discretion of the board, to return to his home, upon such terms and conditions, including personal reports from such paroled person, as said board of parole shall prescribe, and to remain, while on parole, in the legal custody and under the control of the warden of such prison from which paroled, and until the expiration of the term or terms specified in his sentence, less such good time

allowance as is or may hereafter be provided for by Act of Congress; and the said board shall, in every parole, fix the limits of the residence of the person paroled, which limits may thereafter be changed in the discretion of the board: *Provided*, That no release on parole shall become operative until the findings of the board of parole under the terms hereof shall have been approved by the Attorney-General of the United States.

SEC. 4. That if the warden of the prison or penitentiary from which said prisoner was paroled or said board of parole or any member thereof shall have reliable information that the prisoner has violated his parole, then said warden, at any time within the term or terms of the prisoner's sentence, may issue his warrant to any officer hereinafter authorized to execute the same, for the retaking of such prisoner.

SEC. 5. That any officer of said prison or any federal officer authorized to serve criminal process within the United States, to whom such warrant shall be delivered, is authorized and required to execute such warrant by taking such prisoner and returning him to said prison within the time specified in said warrant therefor. All necessary expenses incurred in the administration of this Act shall be paid out of the appropriation for the prison in connection with which such expense was incurred, and such appropriation is hereby made available therefor.

SEC. 6. That at the next meeting of the board of parole held at such prison after the issuing of a warrant for the retaking of any paroled prisoner, said board of parole shall be notified thereof, and if said prisoner shall have been returned to said prison, he shall be given an opportunity to appear before said board of parole, and the said board may then or at any time in its discretion revoke the order and terminate such parole or modify the terms and conditions thereof. If such order of parole shall be revoked and the parole so terminated, the said prisoner shall serve the remainder of the sentence originally imposed; and the time the prisoner was out on parole shall not be taken into account to diminish the time for which he was sentenced.

SEC. 7. That each board of parole shall appoint a parole officer for the penitentiary over which it has jurisdiction. Subject to the direction and control of such board, it shall be the duty of such officer to aid paroled prisoners in securing employment and to visit and exercise supervision over them while on parole, and such officer shall have such authority and perform such other duties as the board of parole may direct. The salary of each parole officer shall be fixed by the board of parole, but shall not exceed one thousand five hundred dollars per annum, which, together with his actual and necessary traveling expenses, when approved by such board, shall be paid out of the appropriation for the maintenance of the penitentiary to which he is assigned, which appropriation is hereby made available for the purpose. In addition to such parole officers the supervision of paroled prisoners may also be devolved upon the United States marshals when the board of parole may deem it necessary.

SEC. 8. That it shall be the duty of the warden of the prison to furnish to any and all paroled prisoners the usual gratuities, con-

sisting of clothing, transportation, and five dollars in money; the transportation furnished shall be to the place to which the paroled prisoner has elected to go, with the approval of the board of parole. The warden of the prison who furnishes these gratuities is hereby authorized to charge the actual cost of the same in his accounts against the United States: *Provided, however,* That when any such paroled prisoner shall have received his final discharge, while he is away from such prison, he shall be entitled to no further gratuities provided for discharged prisoners under existing law.

SEC. 9. That whenever any person has been convicted of any offense against the United States which is punishable by imprisonment, and has been sentenced to imprisonment and is confined therefor, in any reformatory institution of any State in accordance with section fifty-five hundred and forty-eight of the Revised Statutes, or other laws of the United States, then if such State has laws for the parole of prisoners committed to such institutions by the courts of that State, such person convicted of any offense against the United States shall be eligible to parole on the same terms and conditions and by the same authority and subject to recommitment for violation of such parole in the same manner, as persons committed to such institutions by the courts of said State, and the laws of said State relating to the parole of prisoners and the supervision thereof in such institutions are hereby adopted and made to apply to persons committed to such institutions for offenses against the United States. The necessary cost of parole and supervision of such prisoners, to the State where such institution is located shall be paid by the United States out of the appropriation for the support of prisoners confined in State institutions, which appropriation is hereby made available for the purpose. No such prisoner shall be entitled to go on parole until the Attorney-General shall have approved the order therefor: *Provided,* That when a prisoner is committed to such institution outside of the State where he lives he may be permitted by his parole to return to his home, and in such case the supervision of such prisoner on parole shall devolve upon the marshal of the district where said prisoner lives, and in case such prisoner should violate his parole a warrant for his recommitment shall be delivered to and executed by said marshal.

SEC. 10. That nothing herein contained shall be construed to impair the power of the President of the United States to grant a pardon or commutation in any case, or in any way impair or revoke such good-time allowance as is or may hereafter be provided by Act of Congress.

Approved, June 25, 1910 (36 St. L., pt. 1, p. 819).

MAINTENANCE OF WIFE AND CHILDREN

An Act Making it a misdemeanor in the District of Columbia to abandon or willfully neglect to provide for the support and maintenance by any person of his wife or of his or her minor children in destitute or necessitous circumstances

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person in the District of Columbia who shall, without just cause, desert or

willfully neglect or refuse to provide for the support and maintenance of his wife in destitute or necessitous circumstances, or any person who shall, without just excuse, desert or willfully neglect or refuse to provide for the support and maintenance of his or her minor children under the age of sixteen years in destitute or necessitous circumstances, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than five hundred dollars or by imprisonment in the workhouse of the District of Columbia at hard labor for not more than twelve months, or by both such fine and imprisonment; and should a fine be imposed it may be directed by the court to be paid in whole or in part to the wife or to the guardian or custodian of the minor child or children: *Provided*, That before the trial, with the consent of the defendant, or after conviction, instead of imposing the punishment hereinbefore provided, or in addition thereto, the court in its discretion, having regard to the circumstances and to the financial ability or earning capacity of the defendant, shall have the power to make an order, which shall be subject to change by it from time to time as circumstances may require, directing the defendant to pay a certain sum weekly for the space of one year to the wife, or to the guardian or custodian of the minor child or children, or to an organization or individual approved by the court as trustee, and to release the defendant from custody on probation for the space of one year upon his or her entering into a recognizance, with or without sureties, in such sum as the court may direct. The condition of the recognizance shall be such that if the defendant shall make his or her personal appearance in court whenever ordered to do so within the year, and shall further comply with the terms of the order and of any subsequent modification thereof, then the recognizance shall be void, otherwise of full force and effect.

If the court be satisfied by information and due proof, under oath, that at any time during the year the defendant has violated the terms of such order, it may forthwith proceed with the trial of the defendant under the original charge, or sentence him under the original conviction, or enforce the original sentence, as the case may be. In case of forfeiture of a recognizance and enforcement thereof by execution, the sum recovered may, in the discretion of the court, be paid in whole or in part to the wife, or to the guardian or custodian of the minor child or children.

SEC. 2. That no other evidence shall be required to prove marriage of such husband and wife, or that such person is the lawful father or mother of such child or children, than is or shall be required to prove such facts in a civil action. In all prosecutions under this Act any existing provisions of law prohibiting the disclosure of confidential communications between husband and wife shall not apply, and both husband and wife shall be competent and compellable witnesses to testify to any and all relevant matters, including the fact of such marriage and the parentage of such child or children. Proof of the desertion of such wife, child, or children in destitute or necessitous circumstances, or of neglect to furnish such wife, child, or children necessary and proper food, clothing, or shelter is *prima facie* evidence that such desertion or neglect is willful.

SEC. 3. That it shall be the duty of the superintendent in charge of the workhouse of the District of Columbia in which any person is confined on account of a sentence under this law to pay, out of any funds available, over to the wife, or to the guardian or custodian of his or her minor child or children, or to an organization or individual approval by the court as trustee, at the end of each week, for the support of such wife, child, or children, a sum equal to fifty cents for each day's hard labor performed by said person so confined.

Act of March 23, 1906 (34 Stat. L., pt. 1, p. 86).

That hereafter all moneys paid by order of the juvenile court under the provisions of an Act of Congress approved March twenty-third, nineteen hundred and six, entitled "An Act making it a misdemeanor in the District of Columbia to abandon or willfully neglect to provide for the support and maintenance by any person of his wife or of his or her minor children in destitute or necessitous circumstances," and Acts amendatory thereto, which are now collected and disbursed by the clerk of said court, shall be deposited weekly by said clerk with the collector of taxes of the District of Columbia and covered into the Treasury to the credit of the appropriated trust fund account denominated Miscellaneous Trust Fund Deposits, District of Columbia, and all expenditures therefrom shall be made and accounted for in the manner now required by law for other expenditures of the government of the District of Columbia, and the said expenditure shall be made weekly on pay rolls approved and certified by the juvenile court.

Act of May 18, 1910 (36 Stat. L., pt. 1, p. 403).

PANDERING

An Act In relation to pandering, to define and prohibit the same, and to provide for the punishment thereof

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who, by threats by himself, or through another, induces, or by any device or scheme inveigles, any female into a house of prostitution, or of assignation, in the District of Columbia, against her will, or by any threats or duress detains her against her will, for the purpose of prostitution or sexual intercourse, or takes or detains a female against her will with intent to compel her by force, threats, menace, or duress to marry him, or to marry any other person, or if any parent, guardian, or other person having legal custody of the person of a female consents to her taking or detention by any person for the purpose of prostitution or sexual intercourse, is guilty of pandering, and shall be punished by imprisonment for a term of not less than one nor more than five years and fined not more than one thousand dollars.

SEC. 2. That any person who, against her will, shall place any female in the charge or custody of any other person or persons or in a house of prostitution with the intent that she shall live a life of prostitution, or any person who shall compel any female, against her

will, to reside with him or with any other person for the purposes of prostitution, or compel her against her will to live a life of prostitution, is guilty of pandering and shall be punished by a fine of not less than one thousand dollars and imprisonment for not less than one nor more than five years.

SEC. 3. That any person who shall receive any money or other valuable thing for or on account of procuring for or placing in a house of prostitution or elsewhere any female for the purpose of causing her illegally to cohabit with any male person or persons shall be guilty of a felony, and upon conviction thereof shall be imprisoned for not less than one nor more than five years.

SEC. 4. That any person who by force, fraud, intimidation, or threats places or leaves, or procures any other person or persons to place or leave, his wife in a house of prostitution, or to lead a life of prostitution, shall be guilty of a felony, and upon conviction thereof shall be imprisoned not less than one nor more than ten years.

SEC. 5. That any person or persons who attempt to detain any girl or woman in a disorderly house or house of prostitution because of any debt or debts she has contracted, or is said to have contracted, while living in said house of prostitution or disorderly house shall be guilty of a felony, and on conviction thereof be imprisoned for a term not less than one nor more than five years.

Approved, June 25, 1910 (36 Stat. L., pt. 1, p. 833).

JUVENILE COURT ACT

An Act to create a juvenile court in and for the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby created and established in and for the District of Columbia a court, to be known as "The juvenile court of the District of Columbia."

SEC. 2. That the judge of said court shall be known as the judge of the juvenile court, and shall be appointed by the President of the United States, subject to removal by the President for cause, and by and with the advice and consent of the Senate for a term of six years, or until his successor is appointed and confirmed. No person shall be appointed to the office of judge of the said court who is not learned in law. Said judge shall receive an annual salary of three thousand dollars, and he shall be entitled to thirty days' leave of absence without deduction from salary. Said judge shall, before entering upon the duties of his office, take the oath prescribed for judges of courts of the United States.

SEC. 3. That in cases of sickness, absence, disability, expiration of term of service, or death of the judge of the juvenile court, any one of the justices of the supreme court of the District of Columbia may designate one of the justices of the peace of said District to discharge the duties of said judge of the juvenile court until such disability be removed or vacancy filled, and the justice of the peace so designated shall, before entering upon his duties as such acting judge, take the oath prescribed for judges of courts of the United States; and said acting judge shall receive five dollars per day in addition

to his salary as justice of the peace for the term that he shall serve, to be paid in the same manner as the salary of the judge of the juvenile court.

SEC. 4. That the said court shall also have power to appoint two discreet persons of good character as probation officers, one male and one female, and one shall be designated as chief probation officer, who shall receive an annual salary of one thousand five hundred dollars, and the other shall be designated as assistant probation officer, who shall receive an annual salary of nine hundred dollars. Such probation officers shall perform such duties and be governed by such regulations as may be prescribed by the presiding judge, and such presiding judge is authorized to remove such probation officers or either of them, for cause.

SEC. 5. That the said court shall also have power, and is hereby authorized, to defer sentence, at its discretion, in the case of any juvenile offender under the age of seventeen years, and parole such child under the care of the chief probation officer for a probation period discretionary with him, who shall cause said child to return to court at the end of such term either for sentence or dismissal. Such paroled child shall be under the jurisdiction of the juvenile court for such period and shall be subject to such reasonable rules and regulations touching the welfare of the child as may be prescribed by it. In case such paroled child shall fail to keep or shall disregard the terms of his or her parole the said court shall have full power to cause such child to be brought before it for further proceedings.

SEC. 6. That the said court shall have power to appoint a clerk at a salary of two thousand dollars per annum, who shall hold his office during the pleasure of the court.

SEC. 7. That the clerk shall give bond, with surety, and take the oath of office prescribed by law for clerks of district courts of the United States. He shall have power to administer oaths and affirmations, and shall perform such duties and keep such records as may be prescribed by the judge of said court.

SEC. 8. That the juvenile court of the District of Columbia shall have original and exclusive jurisdiction of all crimes and offenses of persons under seventeen years of age hereafter committed against the United States, not capital or otherwise infamous, and not punishable by imprisonment in the penitentiary, committed within the District of Columbia, except libel, conspiracy, and violations of the post-office and pension laws of the United States, and also of all offenses of persons under seventeen years of age hereafter committed against the laws, ordinances, and regulations of the District of Columbia, and shall have power to examine and commit or hold to bail all persons under seventeen years of age, either for trial or further examination, in all cases, whether cognizable therein or in the supreme court of the District of Columbia. Said juvenile court shall have all the powers and jurisdiction conferred by the Act entitled "An Act for the protection of children, and so forth," approved February thirteenth, eighteen hundred and eighty-five, upon the police court of the District of Columbia, and shall also have original and exclusive jurisdiction of all cases involving the legal punishment of children under the provisions of "An Act to provide for

the care of dependent children in the District of Columbia and to create a Board of Children's Guardians," approved July twenty-sixth, eighteen hundred and ninety-two (Twenty-seventh Statutes, page two hundred and sixty-eight), and of the Acts amendatory thereof; also of all cases under the provisions of "An Act to enlarge the powers of the courts of the District of Columbia in cases involving delinquent children, and for other purposes," approved March third, nineteen hundred and one (Thirty-first Statutes, page ten hundred and ninety-three), and said juvenile court may hereafter, concurrently with the criminal court, have and exercise all the powers and jurisdiction conferred by said last-mentioned Act upon the police court of the District of Columbia in the case of parents or guardians who shall refuse or neglect to provide food, clothing, and shelter for any child under the age of fourteen years: *And it is further provided*, That the court may impose conditions upon any person found guilty under the said last-mentioned Act, and so long as such person shall comply therewith to the satisfaction of the court the sentence imposed may be suspended, and may impose similar conditions in all cases of dependent or delinquent children cognizable under existing laws in any court of the District of Columbia, except in the cases hereinbefore already excepted; and the said juvenile court may also hear, try, and determine all cases of persons less than seventeen years of age charged with habitual truancy from school, and in its discretion to commit them to the Board of Children's Guardians, who are hereby given the care and supervision thereof when so committed. No person under seventeen years of age shall hereafter be placed in any institution supported wholly or in part at the public expense until the fact of delinquency or dependency has been first ascertained and declared by the said juvenile court. All children of the class now liable to be committed to the Reform School for Boys and Reform School for Girls shall hereafter be committed by the juvenile court to said schools respectively. All other children delinquent, neglected, or dependent (with the exceptions hereinbefore stated) shall hereafter be committed by the juvenile court to the care of the Board of Children's Guardians, either for a limited period on probation or during minority, as circumstances may require, and no child once committed to any public institution by the order of the juvenile court shall be discharged or paroled therefrom or transferred to another institution without the consent and approval of the said court.

SEC. 9. That the terms "dependent" or "neglected" children as used in this Act shall be held to mean and include any child who is destitute or homeless or abandoned or dependent upon the public for support, or who has not the proper parental care or guardianship, or who habitually begs or receives alms, or whose home, by reason of neglect or cruelty or depravity of the parents, is an unfit place for such a child, or any child under eight years of age found peddling on the streets. The term "delinquent" child or children as used in this Act shall be held to mean and include any child who has been convicted more than once of violating any law of the United States, or any laws, ordinances, or regulations in force in the District of Columbia.

SEC. 10. That any unlawful removal or attempt to remove any child committed by the juvenile court to any institution or agency shall be a misdemeanor, which, if committed by any person or persons over seventeen years of age, shall be punishable, on conviction in the police court, by a fine not exceeding fifty dollars, or imprisonment not more than three months; but if committed by a person or persons under seventeen years of age, shall be punishable, on conviction in the juvenile court, by a like fine, or by imprisonment in some correctional institution to be designated by said court, other than the jail or workhouse, for such reasonable period as such court shall direct.

SEC. 11. That there shall be no fee charged for any service by the clerk.

SEC. 12. That prosecutions in the juvenile court shall be on information by the corporation counsel or his assistant. In all prosecutions within the jurisdiction of said court in which, according to the Constitution of the United States, the accused would be entitled to a jury trial, the trial shall be by jury unless the accused shall in open court expressly waive such trial by jury and request to be tried by the judge, in which case the trial shall be by such judge, and the judgment and sentence shall have the same force and effect in all respects as if the same had been entered and pronounced upon the verdict of a jury. In all cases where the accused would not under the Constitution of the United States be entitled to a trial by jury, the trial shall be by the court without a jury, unless in such of said last-named cases wherein the fine or penalty may be fifty dollars or more, or imprisonment as punishment for the offense may be thirty days or more, the accused shall demand a trial by jury, in which case the trial shall be by jury. In all cases where said court shall impose a fine it may, in default of the payment of the fine imposed, commit the defendant for such a term as the court thinks right and proper, not to exceed one year.

SEC. 13. That in all cases of riot, general disorder, conspiracy, and the like, where two or more persons are charged with the commission of a joint offense, and one or more of the persons so charged shall be under the age of seventeen years, it shall not be necessary to hold the trial of such case or cases in the said juvenile court, but the trial of such offenders shall be conducted as heretofore, anything in this Act to the contrary notwithstanding.

SEC. 14. That the jury for service in said court shall consist of twelve men, who shall have the legal qualifications necessary for jurors in the supreme court of the District, and shall receive a like compensation for their services, and such jurors shall be known and selected under and in pursuance of the laws concerning the drawing and selection of jurors for service in said court. The term of service of jurors drawn for service in said juvenile court shall be for three successive monthly terms of said court, and in any case on trial at the expiration of such time until a verdict shall have been rendered or the jury shall be discharged. The said jury terms shall begin on the first Monday in January, the first Monday in April, the first Monday in July, and the first Monday in October of each year, and shall terminate, subject to the foregoing provisions, on the Saturday prior to the beginning of the following term. When at any term of said court it shall happen that in a pending trial no verdict shall be

found, nor the jury otherwise discharged before the next succeeding term of the court, the court shall proceed with the trial by the same jury as if said term had not commenced.

SEC. 15. That at least ten days before the term of service of said jurors shall begin, as herein provided for, such jurors shall be drawn as hereinbefore directed, and at least twenty-six names so drawn shall be certified by the clerk of the supreme court of said District of Columbia to the said juvenile court for service as jurors for the then ensuing term. Deficiencies in any panel of any such jury may be filled according to the law applicable to jurors in said supreme court, and for this purpose the judge of said juvenile court shall possess all the powers of a judge of said supreme court and of said court sitting as a special term. No person shall be eligible for service on a jury in said juvenile court for more than one jury term in any period of twelve consecutive months, but no verdict shall be set aside on such ground unless objection shall be made before the trial begins. The marshal of said District, by himself or deputy, shall have charge of said jury, and may appoint a deputy for that purpose, who shall be paid three dollars a day while so employed.

SEC. 16. That in all cases tried before said court the judgment of the court shall be final, except as hereinafter provided.

SEC. 17. That the said court shall have power to issue process for the arrest of persons against whom information may be filed or complaint under oath made, and to compel the attendance of witnesses; to punish contempts by fine not exceeding twenty dollars and imprisonment for not more than forty-eight hours, or either, and to enforce any of its judgments by fine or imprisonment, or both, and to make such rules and regulations as may be deemed necessary and proper for conducting business in said court. In all cases where the said court shall impose a fine, it may, in default of the payment of the fine imposed, commit the defendant for such a term as the court thinks right and proper, not to exceed one year. That every person charged with an offense triable in the juvenile court of the District of Columbia may give security for his appearance for trial or for further hearing, either by giving bond to the satisfaction of the court or by depositing money as collateral security with the appropriate officer of the said juvenile court or the station keeper of the police precinct within which such person may be apprehended. And whenever any sum of money shall be deposited as collateral security as hereby provided it shall remain, in contemplation of law, the property of the person depositing it until duly forfeited by the court; and when forfeited it shall be, in contemplation of law, the property of the United States of America, or of the District of Columbia, according as the charge against the person depositing it is instituted on behalf of the said United States or of the said District, and every person receiving any sum of money deposited as hereby provided shall be deemed in law the agent of the person depositing the same or of the United States or the said District, as the case may be, for all purposes of properly preserving and accounting for such money. And all fines payable and paid under judgment of the said juvenile court shall, upon their payment immediately become, in contemplation of law, the property of the United States or the said District, according to the charge upon which such fine may be adjudged,

and the person receiving any such fine shall be deemed in law the agent of the said United States or the said District, as aforesaid, as the case may be; and any person, being an agent as hereinbefore contemplated and defined, who shall wrongfully convert to his own use any money received by him as hereinbefore provided shall be deemed guilty of embezzlement, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars or by imprisonment not exceeding five years, or both.

SEC. 18. That the said court shall have a seal, and the judge or the acting judge thereof shall have power to administer oaths and affirmations.

SEC. 19. That the said court shall hold a term on the first Monday of every month and continue the same from day to day as long as it may be necessary for the transaction of its business.

SEC. 20. That all fines, penalties, costs, and forfeitures imposed or taxed by the said juvenile court shall be paid to the clerk of said court, either with or without process, or on process ordered by said court. The clerk of said court shall, on the first secular day of each week, deposit with the collector of taxes the total amount of all fines, penalties, costs, and forfeitures collected by him during the week next preceding the date of such deposit, to be covered into the Treasury to the credit of the District of Columbia. The said clerk shall render an itemized statement of each deposit aforesaid upon such forms and in such manner as shall be prescribed by the auditor of the District of Columbia.

SEC. 21. That it shall be the duty of the auditor of the District of Columbia, and he is hereby required, to audit the accounts of the clerk of the juvenile court at the end of every quarter and to make prompt report thereof in writing to the Commissioners of the District of Columbia. The auditor of the District shall have free access to all books, papers, and records of the said court.

SEC. 22. That all appeals from the juvenile court shall be heard and determined in the court of appeals of the District of Columbia. If, upon the trial of any cause in the juvenile court, an exception be taken by or on behalf of the United States, the District of Columbia, or any defendant, to any ruling or instruction of the court upon matter of law, the same shall be reduced to writing and stated in a bill of exceptions, with so much of the evidence as may be material to the question or questions raised, which said bill of exceptions shall be settled and signed by the judge within such time as may be prescribed by rules and regulations which shall be made by the said court of appeals for the transaction of business to be brought before it under this section, and for the time and method for the entry of appeals and for giving notice of writs of error thereto from the said juvenile court; and if upon presentation to any justice of the said court of appeals of a petition which, in the case of a defendant, shall be verified, setting forth the matter or matters so excepted to, such justice shall be of opinion that the same ought to be reviewed, he may allow a writ of error in the cause, which shall issue out of the said court of appeals addressed to the said juvenile court, which shall forthwith send up the information filed in the cause and a transcript of the record therein, certified under the seal of his said court, to said court of appeals for review and such action as the law may re-

quire, which record shall be filed in said court of appeals within such time as may be prescribed by the court of appeals as hereinbefore provided. Any party desiring the benefit of the provisions of this section shall give notice in open court of his, her, or its intention to apply for a writ of error upon such exceptions, and thereupon proceedings therein shall be stayed for ten days: *Provided*, That the defendant seeking an appeal shall there and then enter into recognizance, with sufficient surety, to be approved by the judge of the juvenile court, conditioned that in the event of a denial of his application for a writ of error he will, within five days next after the expiration of said ten days, appear in said juvenile court and abide by and perform its judgment, and that in the event of the granting of such writ of error he will appear in said court of appeals and prosecute the writ of error and abide by and perform its judgment in the premises. Upon failure of any defendant to enter into the recognizance provided for in this section the sentence of the juvenile court shall stand and be executed; otherwise execution shall be stayed pending proceedings upon his or her application for a writ of error and until final disposition thereof by the said court of appeals.

SEC. 23. That the marshal of the District of Columbia is authorized and directed to designate one of his deputies to serve at the juvenile court, where he shall perform such services as are required by the presiding judge.

SEC. 24. That in all cases where any child shall be found to be a delinquent child, as defined in section nine of this Act, the parent or parents, legal guardian, or person having the custody of such child, or any other person responsible for or by any act encouraging, causing, or contributing to the delinquency of such child, shall be guilty of a misdemeanor, and upon trial and conviction thereof in the Juvenile Court of the District of Columbia, which is hereby given jurisdiction, shall be fined in a sum not exceeding two hundred dollars or imprisoned in the District jail for a period not exceeding three months, or by both such fine and imprisonment. The court may impose conditions upon any person found guilty under this Act, and as long as such person shall comply therewith to the satisfaction of the court the sentence imposed may be suspended.

SEC. 25. That the provisions of this Act shall be in full force and effect on and after July first, nineteen hundred and six, and all laws or parts of laws inconsistent with the provisions of this Act are hereby repealed.

SEC. 26. That one-half of the expenses hereby incurred under the provisions of this Act shall be paid by the District of Columbia and one-half by the United States.

Approved, March 19, 1906 (34 Stat., Part I, p. 73).

An Act To emancipate from certain disabilities children who have judgments of conviction for crime against them in the Juvenile Court of the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no judgment of conviction against any child of record in the Juvenile Court of the District of Columbia under an Act entitled "An Act to create a Juvenile Court in and for the District of Columbia," approved

March nineteenth, nineteen hundred and six, shall operate as a disqualification of any such child for jury duty, or for holding office, or for any other public service under the government of the United States or the District of Columbia, and no child against whom a judgment of conviction may stand in said Juvenile Court of the District of Columbia under said Act aforesaid shall be denominated a criminal by reason of any such judgment, nor shall such judgment be denominated a conviction.

Act of April 27, 1916 (39 Stat. L, pt. 1, p. 56).

An Act To provide for the parole of juvenile offenders committed to the National Training School for Boys, Washington, District of Columbia, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every male juvenile offender who is now or may hereafter be committed to the National Training School for Boys, and who has by his conduct given sufficient evidence that he has reformed, may be released on parole as hereinafter provided.

SEC. 2. That if it shall appear to the satisfaction of the board of trustees of said school that there is reasonable probability that any boy detained in the said school will, if conditionally released, remain at liberty without violating the laws, then said board of trustees may in its discretion parole such boy under such conditions and regulations as the said board of trustees may deem proper: *Provided*, That the parole of all such juvenile offenders committed by courts other than those of the District of Columbia shall be subject to the approval of the Attorney-General of the United States.

SEC. 3. That all Acts and parts of Acts inconsistent with this Act are hereby repealed.

Approved, February 26, 1909 (35 St. L. 657).

An Act To parole juvenile offenders

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every female juvenile offender who is now or may hereafter be committed to the Reform School for Girls of the District of Columbia, and who has by her conduct given sufficient evidence that she has reformed, may be released on parole as hereinafter provided.

SEC. 2 That if it shall appear to the satisfaction of the board of trustees of said school that there is reasonable probability that any girl detained in the said school will, if conditionally released, remain at liberty without violating the laws, then said board of trustees may, in its discretion, parole such girl under such conditions and regulations as the said board of trustees may deem proper: *Provided*, That the parole of all such juvenile offenders committed by courts other than those of the District of Columbia shall be subject to the approval of the Attorney General of the United States.

SEC. 3. That all Acts and parts of Acts inconsistent with this Act are hereby repealed.

Approved, April 15, 1910 (36 Stat., Pt. I, p. 300).

An Act Empowering the juvenile court of the District of Columbia to issue execution on forfeited recognizances

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the juvenile court of the District of Columbia shall have power to issue execution on all forfeited recognizances upon motion of the proper prosecuting officer, and all writs of fieri facias or other writs of execution issued by said court shall be directed to and executed by the marshal of the District of Columbia. And any recognizance taken in the juvenile court, after being forfeited, may be transmitted to the clerk's office of the supreme court of the District of Columbia and therein docketed in the same manner as forfeited recognizances taken in the police court are now docketed, and thereupon shall have the same effect as if taken in said supreme court; and said lien shall continue as long as such judgment, decree, or recognizance shall be in force or until the same shall be satisfied or discharged.

Approved. March 4, 1909 (35 St. L. 1063).

MAINTENANCE OF BASTARDS

An Act to provide for the support and maintenance of bastards in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every child shall be deemed a bastard who shall be begotten and born out of lawful wedlock, but this shall not be deemed to repeal or modify section nine hundred and fifty-seven of the Code of Law of the District of Columbia.

SEC. 2. That any unmarried woman who is quick with child may go before the clerk of the Juvenile Court of the District of Columbia, or if therein she has been delivered of a bastard child, or (if that be her place of legal residence) if she was delivered thereof outside of the said District, at any time after becoming quick with child or within two years after the birth of the bastard, and accuse any person of being the father of the child. Before issuing a warrant, the clerk shall examine the mother of such bastard child, under oath, concerning her residence and her marriage or single condition when the child was begotten; where and when she was delivered of such child; and if she was delivered of the child outside of the District, the reason thereof, and reduce her statement to writing, and sign same as clerk. If, however, the clerk shall fail to reduce the statement to writing, or if it should be lost, such failure or loss shall be no cause for dismissing the warrant. Or such warrant may be applied for by the Board of Charities of the District or any person as next friend of the said bastard under two years of age.

SEC. 3. That on such examination, if the woman be quick with child, or the child having been born and still under two years of age, a warrant shall be issued by the clerk, directed to the United States marshal, or to the major and superintendent or any member of the Metropolitan police force of the District of Columbia, requiring the person accused to be arrested and brought for prelim-

inary examination before the judge of the juvenile court, District of Columbia, who, upon such preliminary examination, may require the accused to enter into bond, with good surety to the United States of America, in a sum to be fixed by such judge, not to exceed two thousand five hundred dollars, for his appearance and trial in the juvenile court, District of Columbia, on the first day of the next or any succeeding term thereof, and to perform the judgment of said court, but in the event that the woman be quick with child at the time of the arrest, final trial shall not take place until after the birth of the child. If the person accused shall fail to give bond required of him, the judge shall forthwith commit him to the Washington Asylum and Jail, there to remain until he enter into the required bond or otherwise be discharged by due process of law. In all prosecutions under this Act the accused shall, upon his demand therefor, be entitled to a trial by jury; otherwise the trial shall be by the judge.

SEC. 4. That if the accused shall fail to appear, the bond for his appearance as aforesaid shall be forfeited and execution issued thereon; and the trial of, or other proceedings in, the cause shall, nevertheless, proceed as though he were present; and the court shall, upon the verdict of the jury, make all such orders as it shall deem proper as though the accused were in court. In any event, if the accused acknowledge in open court the paternity of such child, or if at the trial the finding of the jury be against the accused, the court, in rendering judgment thereon, shall make an order for the annual payment, until the child be fourteen years of age, of such sum of money, in such installments, monthly or otherwise, and in such manner, as shall to the court seem best, and shall also make such order for the keeping, maintenance, and education of the child as may be proper; and in case of forfeiture of the appearance bond, the money collected upon the forfeiture shall be applied in payment of the judgment against the accused; and if any balance remains after the payment of the said judgment, it shall be covered into the Treasury, through the collector of taxes, to the credit, half and half, of the District of Columbia and the United States.

SEC. 5. That the accused who has failed to execute bond before judgment, if he shall be adjudged to be the father of the child, shall thereupon enter into bond, with or without sureties, in the discretion of the court, conditioned for the payment of the sums adjudged, in such installments and in such manner as the court shall direct. In case of his failure to enter into such bond, the court shall commit him to the Washington Asylum and Jail, there to remain until he shall give such bond or pay the total amount of the sums adjudged. If the child shall die before the expiration of the aforesaid bond, upon payment of the amount or amounts due to the death of the said child, or if all dues be paid under such bond, the person adjudged to be the father of the child and his sureties shall be discharged therefrom.

SEC. 6. That when the defendant shall have been confined for six months, solely for failure to make the payments required or to enter into the bond as ordered, such defendant may make application in writing to the judge of the juvenile court, District of Columbia, setting forth his inability to make such payments, not-

withstanding his desire to do so, or enter into such required bond, upon which application the judge of the juvenile court, District of Columbia, shall proceed to hear and determine the matter. If, on examination, it shall appear to the court that such defendant is unable to make such payments or to execute the required bond, and that he has no property exceeding twenty dollars in value, except such as is by law exempt from being taken on execution for debt, the judge shall administer the following oath: "I do solemnly swear that I have not any property, real or personal, to the amount of twenty dollars, except such as is by law exempt from being taken on civil process for debt by the laws of the District of Columbia, and that I have no property in any way conveyed or concealed, or in any way disposed of for my future use or benefit. So help me, God." Upon taking such oath such prisoner shall be discharged from imprisonment only but not from his obligation as such putative father to support his child; and the judge of the juvenile court, District of Columbia, shall give to the superintendent of the Washington Asylum and Jail a certificate setting forth the facts.

SEC. 7. That should the accused fail to comply with any order of the court entered as aforesaid, the bond shall be forfeited, and the money collected upon the forfeiture shall be applied in payment in full of the judgment against the accused, and if any balance remains after the payment of the said judgment, it shall be covered into the Treasury, through the collector of taxes, to the credit, half and half, of the District of Columbia and the United States.

SEC. 8. That the juvenile court of the District of Columbia is hereby given jurisdiction in all cases arising under this Act as well as concurrent jurisdiction with the Supreme Court of the District of Columbia in all cases arising under the Act approved March twenty-third, nineteen hundred and six, entitled "An Act making it a misdemeanor in the District of Columbia to abandon or willfully neglect to provide for the support and maintenance by any person of his wife or of his or her minor children in destitute and necessitous circumstances." And the court, in its discretion, may order payments to be made by delinquent fathers, at the precinct wherein they reside, through the Metropolitan Police of the District of Columbia.

Approved, June 18, 1912 (37 St. L., pt. 1, 134).

MUNICIPAL COURT ACTS

An Act To change the name and jurisdiction of the inferior court of justice of the peace in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inferior court known as "justice of the peace" in the District of Columbia shall remain as now constituted, but shall hereafter be known as "the municipal court of the District of Columbia." It shall consist of the present justices of the peace of said District, who shall serve as the judges of said court for the unexpired terms of their now existing commissions, and who shall not be required to be recommissioned for said unexpired terms. Thereafter, and upon the expiration of the commission of any of said members, his successor shall be appointed

by the President of the United States, by and with the advice and consent of the Senate, for a term of four years, unless sooner removed as provided by law: *Provided*, That no person shall be appointed to said office unless he shall have been a bona fide citizen and resident of said District for the continuous period of at least five years immediately preceding his appointment, and shall either have been a judge of said court for at least one year, or shall have been engaged in the actual practice of law before the supreme court of the District of Columbia for a period of at least five years prior to his appointment. Each judge, when appointed, shall take an oath for the faithful and impartial performance of the duties of his office. The judges of said court shall no longer be required to give bond as heretofore, but a bond shall be given by the clerk of said court, who shall receive and account for all fees as hereinafter provided. Said municipal court shall sit for the trial of causes in one building to be designated by the Commissioners of the District of Columbia, to be rented by said District of Columbia at a rental not to exceed one thousand eight hundred dollars per annum: *Provided*, That the first vacancy occurring in the office of judge in the municipal court of the District of Columbia, after the passage of this Act shall not be filled, and thereafter the number of said judges shall be five only.

The said court and each member thereof shall exercise the same jurisdiction as was vested in them as justice of the peace immediately before the passage of this Act, and no more, and shall be governed by the laws then in force, except as said laws and said jurisdiction are expressly changed or enlarged hereby.

Any member of said court may try any case within its jurisdiction according to law, regardless of the place and residence of the defendant therein. The jurisdiction of said court is hereby increased from three hundred to five hundred dollars in the class of cases over which it had jurisdiction immediately prior to the passage of this Act; that said jurisdiction shall be exclusive when the amount claimed for debt or damages or the value of personal property claimed does not exceed one hundred dollars, and concurrent with the supreme court of the District of Columbia when it exceeds one hundred dollars and is not in excess of five hundred dollars, with the same right to remove any case by certiorari, as heretofore, in cases of concurrent jurisdiction.

All pending actions and all actions hereinafter instituted shall be assigned for trial among the members of said court in nearly equal numbers and in such manner as may be agreed upon between them. The judges of said court shall hold separate sessions as heretofore, and are empowered to make rules for the apportionment of the business between them, and the act of each of said judges respecting the business of said court shall be deemed and taken to be the act of said court. Each of said judges is hereby empowered to administer oaths. The judges of said court shall receive the annual salary of two thousand five hundred dollars in lieu of the salary heretofore provided for justices of the peace by section six of the Code of Law for the District of Columbia, to be paid monthly as heretofore, but they shall not receive the allowance heretofore granted for rent, stationery, and other expenses. In case of sickness, absence, disability, expiration of term of service or death of either of the judges of the police

court or of the juvenile court, any one of the justices of the supreme court of the District of Columbia may designate one of the judges of the municipal court to discharge the duties of said judges until such disability be removed or vacancy filled. The justice so designated shall take the same oath prescribed for these judges.

The said court shall have power to appoint a clerk at an annual salary of one thousand five hundred dollars and an assistant clerk at an annual salary of one thousand dollars, payable monthly by the District of Columbia, which clerks shall hold office at the pleasure of the court.

The clerks shall receive and care for all deposits for costs made and fees exacted under the rules governing the fee charges of said court, and shall make a weekly deposit with the collector of taxes for the District of Columbia of all fees earned during the preceding week.

He shall return to suitors making such deposits any proportion of a deposit which shall remain in his hands over and above the earned fees in completed cases, and shall render an itemized statement to the auditor of the District of Columbia of every fee earned, on such forms and in such manner as shall be prescribed by the auditor of the District of Columbia. In case there shall remain in the hands of the said clerk for a term of three years a balance or part of a deposit in any case which shall not have been called for by the party or parties entitled to receive the same, the same shall revert to the District of Columbia, and be paid forthwith to the collector of taxes as part of the revenues of the District of Columbia.

In all suits in said court process shall be signed by the said clerk or assistant clerk in the name of the court. The assistant clerk may sign the name of the clerk to any official act required by law or by the practice of the court to be performed by the clerk. In such case the signature shall be "———, Clerk, by ———, Assistant Clerk."

Both the clerk and assistant clerk are hereby given authority to administer oaths in all cases pending in said court, or about to be filed therein.

The clerk shall perform such other and further duties as may from time to time be prescribed by the municipal court.

He shall give bond to the District of Columbia in the sum of five thousand dollars, with surety or sureties to be approved by the Commissioners of the District of Columbia, for the faithful performance of the duties of his office, and the assistant clerk shall give a like bond in the sum of two thousand dollars: *Provided*, That the expenditures to be incurred under any of the provisions of this Act shall not in any case exceed the total amount of revenues and fees of the said municipal court.

The said clerk shall keep a docket similar to the one heretofore provided for justices of the peace.

Approved, February 17, 1909 (35 Stat. L. pt. 1, p. 623).

An Act To enlarge the jurisdiction of the Municipal Court of the District of Columbia, and to regulate appeals from the judgments of said court, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Municipal

Court of the District of Columbia shall have exclusive jurisdiction in the following civil cases in which the claimed value of personal property or the debt or damages claimed, exclusive of interest and costs, does not exceed \$1,000, namely, in the classes of cases over which the court had jurisdiction immediately prior to the passage of this Act, and in actions for the recovery of damages for assault, assault and battery, slander, libel, malicious prosecution, and breach of promise to marry. The concurrent jurisdiction of the Supreme Court of the District of Columbia in any such case and the right to remove such cases to said Supreme Court by the statutory writ of certiorari, are hereby abolished. Said Municipal Court shall also have jurisdiction of civil causes now pending in the Supreme Court which are of the classes and amounts over which the Municipal Court had jurisdiction immediately prior to the passage of this Act and also the actions pending in the Supreme Court over which the municipal court would have jurisdiction if brought under the provisions of this Act and which may be transferred to it for trial and disposition by order of said Supreme Court.

SEC. 2. That hereafter said Municipal Court shall be a court of record, shall have a seal, and shall have the same terms of court as those now obtaining, or as hereafter modified, in the circuit branches of the Supreme Court of the District of Columbia.

SEC. 3. That hereafter when the value in controversy in any action pending in said Municipal Court shall exceed \$20, and in all actions for the recovery of possession of real property, either party may demand a trial by jury. The trial judge shall conduct such jury trial and according to the practice and procedure now obtaining, or as hereafter modified, in the Supreme Court of the District of Columbia, and shall have the same power to instruct juries, set aside verdicts, arrest judgments and grant new trials as said Supreme Court.

SEC. 4. That jurors for said Municipal Court shall be drawn and selected under and in pursuance of the laws now obtaining, or as hereafter modified, concerning the drawing, selection, term of service and mode of filling deficiencies in a panel and shall be subject to the same duties and liabilities, and shall receive the same compensation as petit jurors in the Supreme Court of the District of Columbia, as fully as if such laws directly referred to said Municipal Court, excepting that in said Municipal Court there may be an additional term of service to begin on the first Tuesday in August of each year, and to terminate on the first Tuesday of October. Section 73 of the Code of Law of the District of Columbia, relating to bills of exceptions, shall apply to said Municipal Court as well as to the Supreme Court of the District of Columbia. At least ten days before the term of service of jurors shall begin, the clerk of the said Supreme Court shall certify to the said Municipal Court, for service as jurors for the then ensuing term, the names of not to exceed thirty-six persons, drawn as directed by law. Deficiencies in any panel of any such jury may be filled according to the law applicable to jurors in said Supreme Court, and for this purpose any judge of said Municipal Court shall possess all the powers of a judge of said Supreme Court and of said court sitting as a special term.

Whenever the judges of the Municipal Court shall certify in writing that the business of said court requires the services of addi-

tional jurors and shall file a certificate to that effect in the office of the clerk of the Supreme Court of the District of Columbia, said Supreme Court shall direct the clerk of the said Supreme Court to certify to said Municipal Court for service as jurors for the then ensuing terms the names of such number of other persons as may be necessary for such service, which names shall be drawn as directed by law.

SEC. 5. That if neither party shall demand a trial by jury, or if the value in controversy shall not exceed \$20, the case may be tried and determined by any judge of the court, and his finding upon the facts, which may be either general or special, shall have the same effect as a verdict of a jury, with the same right of either party to take an exception to any ruling of the court, and have the same embodied in a bill of exceptions, as in case of a jury trial.

SEC. 6. That all judgments hereafter entered by said Municipal Court shall remain in force for six years and no longer, unless the same shall have been docketed in the office of the clerk of the Supreme Court of the District of Columbia as provided by existing law, in which event they shall be liens as is provided by Chapter XXXVIII of the Code of Law for the District of Columbia for judgments of justices of the peace. No judgment shall become a lien upon any lands, tenements, or hereditaments until so docketed.

SEC. 7. That nonresidents of the District of Columbia may commence suits in said Municipal Court without first giving security for costs, but upon motion may be required to give such security in pursuance of section 175 of the Code of Law for the District of Columbia.

SEC. 8. That upon satisfactory evidence being presented to the court or one of the judges thereof that the plaintiff in any suit is indigent and unable to make deposit of costs, such court or judge may, in its or his discretion, permit the prosecution of such suit without the prepayment or deposit of costs.

SEC. 9. That section 1557 of the Code of Law for said District, governing the return to defendant of goods and chattels taken by virtue of the writ of replevin, and sections 1529, 1530, and 1531 of said Code of Law, authorizing payment of money into court in certain cases, are hereby made applicable to the said Municipal Court.

The provisions of the Code of Laws for the District of Columbia relating to attachments shall apply to attachment proceedings in said Municipal Court.

SEC. 10. That the marshal of the United States in and for the District of Columbia shall designate two of his deputies to take charge of the jurors in the Municipal Court, under the direction of the trial judge, and they shall perform such other services as the judge may require.

SEC. 11. That the said Municipal Court, sitting in banc, shall have power to prescribe fees and costs, including the fee to be paid for a jury trial, to make rules of practice, pleading, and procedure, not inconsistent with law, and to modify and change the same from time to time, to insure the proper administration of justice. Section 1109 of the Code of Law for the District of Columbia relating to fees, shall not apply to said Municipal Court.

SEC. 12. That hereafter no appeal shall lie from the Municipal Court to the Supreme Court of the District of Columbia. If in any case in the Municipal Court an exception is taken by any party to any ruling or instruction of the court on matter of law the exception shall be reduced to writing and stated in a bill of exceptions with so much of the evidence as may be material to the question or questions raised, and such bill of exceptions shall be settled and signed by the judge within such time as may be prescribed by the rules of said court. Any party aggrieved by any final judgment of said court may seek a review thereof by the Court of Appeals of the District of Columbia by petition under oath setting forth concisely but clearly and distinctly the nature of the proceeding in said court, the trial and judgment therein and the particular ruling or instruction upon matter of law to which exception has been taken, said petition to be presented to any justice of the Court of Appeals within ten days after the entry of such judgment and with such notice to the opposite party as may be required by rules of said Court of Appeals. If the justice shall be of opinion that such judgment ought to be reviewed a writ of error shall be issued from the Court of Appeals to the Municipal Court which shall send to the Court of Appeals, within such time as may be prescribed by that court, a transcript of the record in the case sought to be reviewed; and the Court of Appeals shall review said record and affirm, reverse, or modify the judgment in accordance with law. Execution of such judgment shall be stayed if the party seeking the review shall within twenty days after the entry of the judgment file in the clerk's office of the Municipal Court an undertaking with surety and penal amount approved by a judge of the court, to abide by and pay the judgment and the costs of the review if such judgment shall not be reversed; and, when the defendant in an action to recover possession of real estate seeks such review, the undertaking shall also provide for the payment of all intervening damages to the property sought to be recovered and compensation for its use and occupation from the date of the judgment to the date of the satisfaction thereof if the judgment is not reversed; and in all such undertakings the principal and surety shall submit to the jurisdiction of the Municipal Court and consent to the entry of judgment against them in that court in respect of their undertaking.

SEC. 13. That each of the present judges of said Municipal Court shall serve until the expiration of his present commission and until his successor is duly appointed and qualified. Each judge hereafter appointed shall serve for the term of four years and until his successor is duly appointed and qualified.

SEC. 14. That this Act shall take effect ninety days after its passage.

SEC. 15. That all Acts and parts of Acts inconsistent herewith are hereby repealed: *Provided*, That nothing herein shall be construed to deprive the Supreme Court of the District of Columbia or the Court of Appeals of the District of Columbia from reviewing and finally determining such cases as may be pending on appeal or certiorari at the time that this Act goes into effect: *Provided further*, That nothing herein shall be construed to deprive the said Municipal Court of any jurisdiction possessed by said court at the time of the

passage of this Act: *Provided further*, That nothing in this Act shall be construed to supersede or modify any of the provisions of Public resolution numbered 31, Sixty-fifth Congress, entitled "Joint resolution to prevent rent profiteering in the District of Columbia," approved May 31, 1918, nor of any provisions of Public law numbered 63, approved October 22, 1919, entitled "An Act to amend an Act entitled, 'An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel,' approved August 10, 1917, and to regulate rents in the District of Columbia."

Approved, March 3, 1921 (41 Stat. L. pt. 1, p. 1310).

ASSIGNMENT OF JUSTICES

[Extract from an Act providing for the assignment of justices to the Supreme Court and Court of Appeals of the District of Columbia]

SEC. 5. Section 18 of the Judicial Code is hereby amended to read as follows:

"SEC. 18. The Chief Justice of the United States, or the circuit justice of any judicial circuit, or the senior circuit judge thereof, may, if the public interest requires, designate and assign any circuit judge of a judicial circuit to hold a district court within such circuit. The judges of the United States Court of Customs Appeals, or any of them, whenever the business of that court will permit, may, if in the judgment of the Chief Justice of the United States the public interest requires, be designated and assigned by him for service from time to time, and until he shall otherwise direct, in the Supreme Court of the District of Columbia or the Court of Appeals of the District of Columbia, when requested by the Chief Justice of either of said courts.

"During the period of service of any judge designated and assigned under this Act he shall have all the powers, and rights, and perform all the duties, of a judge of the district, or a justice of the court, to which he has been assigned (excepting the power of appointment to a statutory position or of permanent designation of newspaper or depository of funds): *Provided, however*, That in case a trial has been entered upon before such period of service has expired and has not been concluded, the period of service shall be deemed to be extended until the trial has been concluded.

"Any designated and assigned judge who has held court in another district than his own shall have power, notwithstanding his absence from such district and the expiration of the time limit in his designation, to decide all matters which have been submitted to him within such district, to decide motions for new trials, settle bills of exceptions, certify or authenticate narratives of testimony, or perform any other act required by law or the rules to be performed in order to prepare any case so tried by him for review in an appellate court; and his action thereon in writing filed with the clerk of the court where the trial or hearing was had shall be as valid as if such action

had been taken by him within that district and within the period of his designation."

* * * *

SEC. 7. All laws or parts thereof inconsistent or in conflict with the provisions of this Act are hereby repealed.

Approved, September 14, 1922 (42 Stat. L., pt. 1, p. 839).

LUNACY PROCEEDINGS

An Act To change the lunacy proceedings in the District of Columbia where the Commissioners of said District are the petitioners, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter the proceedings instituted upon petition of the Commissioners of the District of Columbia to determine the mental condition of alleged indigent insane persons and persons alleged to be insane, with homicidal or otherwise dangerous tendencies, shall be according to the provisions of the code of law for the District of Columbia relating to lunacy proceedings: *Provided*, That the jury to be used in case the said commissioners are the petitioners shall be impaneled by the United States marshal for said District, upon order of the court, from the jurors in attendance upon the criminal courts of said District, who shall perform such services in addition to and as part of their duties in said criminal courts: *Provided further*, That during such time as jurors are not in attendance upon said criminal courts the court may direct the said marshal to impanel the jurors in attendance upon the police court of said District, who shall perform such duties in addition to and as part of their duties in said police court; or the said court may direct a special jury to be summoned for such inquisitions. In case any such person adjudged to be of unsound mind has property, real or personal, the equity court of said District shall have full power in the same cause to appoint a committee or trustee of the person and estate of such person, according to the provisions of said code, and such committee or trustee shall reimburse, out of the funds of the lunatic, the District of Columbia for all court costs expended or incurred by it and for all moneys by it expended or costs incurred in caring for and treating such insane person up to the time of such appointment.

SEC. 2. That in case any person adjudged to be of unsound mind in the District of Columbia who is committed to the Government Hospital for the Insane, or any other institution, recovers his or her reason, and who is discharged from such institutions as cured, the superintendent of said Government Hospital for the Insane, or the official in charge of any such other institution where such person has been under treatment and has been so discharged, shall immediately thereafter file with the clerk of the Supreme Court of the District of Columbia his sworn statement that such person, in his opinion, was at the time of his discharge of sound mind, and such statement shall be sufficient to authorize the court to pass an order declaring such person to be restored to his or her former legal status as a person of sound mind.

Approved, February 23, 1905 (33 Stat. L., pt. 1, p. 740).

WAREHOUSE RECEIPTS ACT

An Act To make uniform the law of warehouse receipts in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following provisions to make uniform the law of warehouse receipts in the District of Columbia shall be in effect on and after the approval of this Act, namely:

PART I

THE ISSUE OF WAREHOUSE RECEIPTS

SECTION 1. PERSONS WHO MAY ISSUE RECEIPTS.—Warehouse receipts may be issued by any warehouseman.

SEC. 2. FORM OF RECEIPTS—ESSENTIAL TERMS.—Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms—

- (a) The location of the warehouse where the goods are stored;
- (b) The date of issue of the receipt;
- (c) The consecutive number of the receipt;
- (d) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;
- (e) The rate of storage charges;
- (f) A description of the goods or of the packages containing them;
- (g) The signature of the warehouseman, which may be made by his authorized agent;
- (h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and
- (i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby for all damage caused by the omission from a negotiable receipt of any of the terms herein required.

SEC. 3. FORM OF RECEIPTS—WHAT TERMS MAY BE INSERTED.—A warehouseman may insert in a receipt issued by him any other terms and conditions, provided that such terms and conditions shall not—

- (a) Be contrary to the provisions of this Act;
- (b) In any wise impair his obligation to exercise that degree of care in the safe-keeping of the goods intrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

SEC. 4. DEFINITION OF NONNEGOTIABLE RECEIPT.—A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a nonnegotiable receipt.

SEC. 5. DEFINITION OF NEGOTIABLE RECEIPTS.—A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt, is a negotiable receipt.

No provision shall be inserted in a negotiable receipt that it is nonnegotiable. Such provision, if inserted, shall be void.

SEC. 6. DUPLICATE RECEIPTS MUST BE SO MARKED.—When more than one negotiable receipt is issued for the same goods, the word "Duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to anyone who purchased the subsequent receipt for value, supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt.

SEC. 7. FAILURE TO MARK "NOT NEGOTIABLE."—A nonnegotiable receipt shall have plainly placed upon its face by the warehouseman issuing it "Nonnegotiable" or "Not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable.

This section shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character.

PART II

OBLIGATIONS AND RIGHTS OF WAREHOUSEMEN UPON THEIR RECEIPTS

SEC. 8. OBLIGATION OF WAREHOUSEMAN TO DELIVER.—A warehouseman, in the absence of some lawful excuse provided by this Act, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with—

(a) An offer to satisfy the warehouseman's lien;

(b) An offer to surrender the receipt if negotiable, with such indorsements as would be necessary for the negotiation of the receipt; and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgement that they have been delivered, if such signature is requested by the warehouseman.

In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal.

SEC. 9. JUSTIFICATION OF WAREHOUSEMAN IN DELIVERING.—A warehouseman is justified in delivering the goods, subject to the provisions of the three following sections, to one who is—

(a) The person lawfully entitled to the possession of the goods or his agent;

(b) A person who is either himself entitled to delivery by the terms of a nonnegotiable receipt issued for the goods, or who has written authority from the person so entitled either indorsed upon the receipt or written upon another paper; or

(c) A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been indorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee.

SEC. 10. WAREHOUSEMAN'S LIABILITY FOR MISDELIVERY.—Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section, and though he delivered the goods as authorized by said subdivisions he shall be so liable, if prior to such delivery he had either—

(a) Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery; or

(b) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods.

SEC. 11. NEGOTIABLE RECEIPTS MUST BE CANCELED WHEN GOODS DELIVERED.—Except as provided in section thirty-six, where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to anyone who purchases for value in good faith such receipt for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman.

SEC. 12. NEGOTIABLE RECEIPTS MUST BE CANCELED OR MARKED WHEN PART OF GOODS DELIVERED.—Except as provided in section thirty-six, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt or to place plainly upon it a statement of what goods or packages have been delivered he shall be liable, to anyone who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman.

SEC. 13. ALTERED RECEIPTS.—The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was—

- (a) Immaterial,
- (b) Authorized, or
- (c) Made without fraudulent intent.

If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt as they were before alteration.

Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with

notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase.

SEC. 14. LOST OR DESTROYED RECEIPTS.—Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties, to be approved by the court, to protect the warehouseman from any liability or expense which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable costs and counsel fees.

The delivery of the goods under an order of the court as provided in this section shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

SEC. 15. EFFECT OF DUPLICATE RECEIPTS.—A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but shall impose upon him no other liability.

SEC. 16. WAREHOUSEMAN CAN NOT SET UP TITLE IN HIMSELF.—No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt.

SEC. 17. INTERPLEADER OF ADVERSE CLAIMANTS.—If more than one person claim the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead.

SEC. 18. WAREHOUSEMAN HAS REASONABLE TIME TO DETERMINE VALIDITY OF CLAIMS.—If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

SEC. 19. ADVERSE TITLE IS NO DEFENSE, EXCEPT AS ABOVE PROVIDED.—Except as provided in the two preceding sections and in sections nine and thirty-six, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt.

SEC. 20. LIABILITY FOR NONEXISTENCE OR MISDESCRIPTION OF GOODS.—A warehouseman shall be liable to the holder of a receipt for dam-

ages caused by the nonexistence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate or of the kind they were said to be by the depositor.

SEC. 21. LIABILITY FOR CARE OF GOODS.—A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care.

SEC. 22. GOODS MUST BE KEPT SEPARATE.—Except as provided in the following section, a warehouseman shall keep the goods, so far separate from goods of other depositors and from other goods of the same depositor for which a separate receipt has been issued as to permit at all times the identification and redelivery of the goods deposited.

SEC. 23. FUNGIBLE GOODS MAY BE COMMINGLED, IF WAREHOUSEMAN AUTHORIZED.—If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common, and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole.

SEC. 24. LIABILITY OF WAREHOUSEMAN TO DEPOSITORS OF COMMINGLED GOODS.—The warehouseman shall be severally liable to each depositor for the care and redelivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate.

SEC. 25. ATTACHMENT OR LEVY UPON GOODS FOR WHICH A NEGOTIABLE RECEIPT HAS BEEN ISSUED.—If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they can not thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court.

SEC. 26. CREDITORS' REMEDIES TO REACH NEGOTIABLE RECEIPTS.—A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity, in re-

gard to property which can not readily be attached or levied upon by ordinary legal process.

SEC. 27. WHAT CLAIMS ARE INCLUDED IN THE WAREHOUSEMAN'S LIEN.—Subject to the provisions of section thirty, a warehouseman shall have a lien on goods deposited or on proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering, and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisement of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien.

SEC. 28. AGAINST WHAT PROPERTY THE LIEN MAY BE ENFORCED.—Subject to the provisions of section thirty, a warehouseman's lien may be enforced—

(a) Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted; and

(b) Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted, if such person had been so intrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid.

SEC. 29. HOW THE LIEN MAY BE LOST.—A warehouseman loses his lien upon goods—

(a) By surrendering possession thereof, or

(b) By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this Act.

SEC. 30. NEGOTIABLE RECEIPT MUST STATE CHARGES FOR WHICH LIEN IS CLAIMED.—If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within the terms of section twenty-seven, although the amount of the charges so enumerated is not stated in the receipt.

SEC. 31. WAREHOUSEMAN NEED NOT DELIVER UNTIL LIEN IS SATISFIED.—A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied.

SEC. 32. WAREHOUSEMAN'S LIEN DOES NOT PRECLUDE OTHER REMEDIES.—Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay.

SEC. 33. SATISFACTION OF LIEN BY SALE.—A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed

to the last known place of business or abode of the person to be notified. The notice shall contain—

(a) An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due;

(b) A brief description of the goods against which the lien exists;

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail and

(d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed an advertisement of the sale, describing the goods to be sold and stating the name of the owner or person on whose account the goods are held and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein.

From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of this Act, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit.

SEC. 34. PERISHABLE AND HAZARDOUS GOODS.—If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the

lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reasonable effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof.

The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of the preceding section.

SEC. 35. OTHER METHODS OF ENFORCING LIENS.—The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property.

SEC. 36. EFFECT OF SALE.—After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable.

PART III

NEGOTIATION AND TRANSFER OF RECEIPTS

SEC. 37.—NEGOTIATION OF NEGOTIABLE RECEIPTS BY DELIVERY.—A negotiable receipt may be negotiated by delivery—

(a) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer; or

(b) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are deliverable to bearer or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee.

SEC. 38. NEGOTIATION OF NEGOTIABLE RECEIPTS BY INDORSEMENT.—A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner.

SEC. 39. TRANSFER OF RECEIPTS.—A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

A nonnegotiable receipt can not be negotiated, and the indorsement of such a receipt gives the transferee no additional right.

SEC. 40. WHO MAY NEGOTIATE A RECEIPT.—A negotiable receipt may be negotiated—

(a) By the owner thereof; or

(b) By any person to whom the possession or custody of the receipt has been intrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been intrusted, or if at the time of such intrusting the receipt is in such form that it may be negotiated by delivery.

SEC. 41. RIGHTS OF PERSON TO WHOM A RECEIPT HAS BEEN NEGOTIATED.—A person to whom a negotiable receipt has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value; and

(b) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him.

SEC. 42. RIGHTS OF PERSON TO WHOM A RECEIPT HAS BEEN TRANSFERRED.—A person to whom a receipt has been transferred but not negotiated acquires thereby, as against the transferrer, the title to the goods, subject to the terms of any agreement with the transferrer.

If the receipt is nonnegotiable, such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt.

Prior to the notification of the warehouseman by the transferrer or transferee of a nonnegotiable receipt, the title of the transferrer to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferrer, or by a notification to the warehouseman by the transferrer or a subsequent purchaser from the transferrer of a subsequent sale of the goods by the transferrer.

SEC. 43. TRANSFER OF NEGOTIABLE RECEIPT WITHOUT INDORSEMENT.—Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferrer is essential for negotiation, the transferee acquires a right against the transferrer to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made.

SEC. 44. WARRANTIES ON SALE OF RECEIPT.—A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants—

- (a) That the receipt is genuine;
- (b) That he has a legal right to negotiate or transfer it;
- (c) That he has knowledge of no fact which would impair the validity or worth of the receipt; and
- (d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose

whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby.

SEC. 45. INDORSER NOT A GUARANTOR.—The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations.

SEC. 46. NO WARRANTY IMPLIED FROM ACCEPTING PAYMENT OF A DEBT.—A mortgagee, pledgee, or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described.

SEC. 47. WHEN NEGOTIATION NOT IMPAIRED BY FRAUD, MISTAKE, OR DURESS.—The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to intrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake, or duress.

SEC. 48. SUBSEQUENT NEGOTIATION.—Where a person having sold, mortgaged, or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage, or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

SEC. 49. NEGOTIATION DEFEATS VENDOR'S LIEN.—Where a negotiable receipt has been issued for goods no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation.

PART IV

CRIMINAL OFFENSES

SEC. 50. ISSUE OF RECEIPT FOR GOODS NOT RECEIVED.—A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such

receipt, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both.

SEC. 51. ISSUE OF RECEIPT CONTAINING FALSE STATEMENT.—A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year or by a fine not exceeding one thousand dollars, or by both.

SEC. 52. ISSUE OF DUPLICATE RECEIPTS NOT SO MARKED.—A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "Duplicate," except in the case of a lost or destroyed receipt after proceedings as provided for in section fourteen, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both.

SEC. 53. ISSUE FOR WAREHOUSEMAN'S GOODS OF RECEIPTS WHICH DO NOT STATE THAT FACT.—Where there are deposited with or held by a warehouseman goods of which he is the owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

SEC. 54. DELIVERY OF GOODS WITHOUT OBTAINING NEGOTIABLE RECEIPTS.—A warehouseman, or any officer, agent, or servant of a warehouseman, who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in sections fourteen and thirty-six, be found guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

SEC. 55. NEGOTIATION OF RECEIPT FOR MORTGAGED GOODS.—Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

PART V

INTERPRETATION

SEC. 56. WHEN RULES OF COMMON LAW STILL APPLICABLE.—In any case not provided for in this Act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress, or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.

SEC. 57. INTERPRETATION SHALL GIVE EFFECT TO PURPOSE OF UNIFORMITY.—This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it.

SEC. 58. DEFINITIONS.—First. In this Act, unless the context or subject-matter otherwise requires—

“Action” includes counterclaim, set-off, and suit in equity.

“Delivery” means voluntary transfer of possession from one person to another.

“Fungible goods” means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit.

“Goods” means chattels or merchandise in storage, or which has been or is about to be stored.

“Holder” of a receipt means a person who has both actual possession of such receipt and a right of property therein.

“Order” means an order by indorsement on the receipt.

“Owner” does not include mortgagee or pledgee.

“Person” includes a corporation or partnership or two or more persons having a joint or common interest.

To “purchase” includes to take as mortgagee or as pledgee.

“Purchaser” includes mortgagee and pledgee.

“Receipt” means a warehouse receipt.

“Value” is any consideration sufficient to support a simple contract. An antecedent or preexisting obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

“Warehouseman” means a person lawfully engaged in the business of storing goods for profit.

Second. A thing is done “in good faith” within the meaning of this Act when it is in fact done honestly, whether it be done negligently or not.

SEC. 59. ACT DOES NOT APPLY TO EXISTING RECEIPTS.—The provisions of this Act do not apply to receipts made and delivered prior to the taking effect of this Act.

SEC. 60. INCONSISTENT LEGISLATION REPEALED.—All Acts or parts of Acts inconsistent with this Act are hereby repealed.

SEC. 61. TIME WHEN THE ACT TAKES EFFECT.—This Act shall take effect on the — day of —, nineteen hundred and —.

SEC. 62. NAME OF ACT.—This Act may be cited as the Warehouse Receipts Act.

Approved, April 15, 1910 (36 Stat., Part I, p. 301).

See act August 11, 1916 (39 Stat. L. 486), as amended February 23, 1923 (42 Stat. L. p. 1282).

ALLEY DWELLINGS

An Act To provide, in the interest of public health, comfort, morals, and safety, for the discontinuance of the use as dwellings of buildings situated in the alleys in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this Act it shall be unlawful in the District of Columbia to erect, place, or construct any dwelling on any lot or parcel of ground fronting on an alley where such alley is less than thirty feet wide throughout its entire length and which does not run straight to and open on two of the streets bordering the square, and is not supplied with sewer, water mains, and gas or electric light; and in this Act the term "alley" shall include any and all courts, passages, and thoroughfares, whether public or private, and any ground intended for or used as a highway other than the public streets or avenues; and any dwelling house now fronting an alley less than thirty feet wide and not extending straight to the streets and provided with sewer, water main, and light, as aforesaid, which has depreciated or been damaged more than one-half its original value, shall not be repaired or reconstructed as a dwelling or for use as such, and no permit shall be issued for the alteration, repair, or reconstruction of such a building, when the plans indicate any provision for dwelling purposes: *Provided,* That rooms for grooms or stablemen to be employed in the building to be erected, repaired, or reconstructed may be allowed over stables, when the means of exit and safeguards against fire are sufficient, in the opinion of the inspector of buildings, subject to the approval of the Commissioners of the District of Columbia; and no building now or hereafter erected fronting on an alley or on any parcel of ground fronting on an alley less than thirty feet wide and not otherwise in accordance with this Act shall be altered or converted to the uses of a dwelling. Any such alley house depreciated or damaged more than one-half of its original value shall be condemned as provided by law for the removal of dangerous or unsafe buildings and parts thereof, and for other purposes. No dwelling house hereafter erected or placed along any alley and fronting or facing thereon shall in any case be located less than twenty feet back clear of the center line of such alley, so as to give at least a thirty-foot roadway and five feet on each side of such roadway clear for a walk or footway, and any stable or other building hereafter placed, located, altered, or erected on or along such an alley upon which a dwelling faces or fronts shall be set back clear of the walk or footway the same as the dwelling or dwellings, but the fact that dwellings are located in such alleys shall not affect the location of stables or other buildings otherwise.

The use or occupation of any building or other structure erected or placed on or along any such alley as a dwelling or residence or place of abode by any person or persons is hereby declared injurious to life, to public health, morals, safety, and welfare of said District; and such use or occupation of any such building or other structure on, from, and after the first day of July, nineteen hundred and eighteen, shall be unlawful.

SEC. 2. That any person or persons, whether as principal, agent, or employee, violating any of the provisions of this Act or any amendment thereof for the violation of which no other penalty is prescribed, shall, on conviction thereof in the police court, be punished by a fine of not less than \$10 nor more than \$100 for each such violation, and a like fine for each day during which such violation has continued or may continue, to be recovered as other fines and penalties are recovered.

SEC. 3. That the Act of Congress approved July twenty-second, eighteen hundred and ninety-two, entitled "An Act regulating the construction of buildings along alleyways in the District of Columbia," and all laws or parts of laws inconsistent with the provisions hereof, are hereby repealed.

Approved, September 25, 1914 (38 Stat. L., pt. 1, p. 716).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the operation of the second paragraph of section one (relating to the use or occupation of alley buildings as dwellings), of the Act of Congress approved September twenty-fifth, nineteen hundred and fourteen, entitled "An Act to provide, in the interest of public health, comfort, morals, and safety, for the discontinuance of the use as dwellings of buildings situated in the alleys in the District of Columbia," be, and the same hereby is, postponed until the expiration of one year following the date of the proclamation by the President of the exchange of ratifications of the treaty of peace between the United States and the Imperial German Government.

Approved, May 23, 1918 (40 Stat. L., pt. 1, p. 560).

Further postponed to June 1, 1923, by Act of September 6, 1922 (42 Stat. L., p. 837).

REMOVAL OF SNOW AND ICE

An Act Providing for the removal of snow and ice from the paved sidewalks of the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be the duty of every person, partnership, corporation, joint-stock company, or syndicate in charge or control of any building or lot of land within the fire limits of the District of Columbia, fronting or abutting on a paved sidewalk, whether as owner, tenant, occupant, lessee, or otherwise, within the first eight hours of daylight after the ceasing to fall of any snow or sleet, to remove and clear away, or cause to be removed and cleared away, such snow or sleet from so much of said sidewalk as is in front of or abuts on said building or lot of land.

SEC. 2. That it shall be the duty of the Commissioners of the District of Columbia, within the first eight hours of daylight after the ceasing to fall of any snow or sleet, or after the accumulation of ice on the paved sidewalks within the fire limits of the District of Columbia, in front of or adjacent to all public buildings, public squares, reservations, and open spaces in the said District owned or held by lease by said District, to cause such snow, sleet, and ice

to be removed; and also to cause the same to be removed from all crosswalks of improved streets and places of intersection of alleys with paved sidewalks, and also from all paved sidewalks or crosswalks used as public thoroughfares through all public squares, reservations, or open spaces within the fire limits of said District owned or held by lease by the District of Columbia; but in the event of inability to remove such accumulation of snow, sleet, and ice without injury to the sidewalk, by reason of the hardening thereof, it shall be their duty, within the first eight hours of daylight after the hardening thereof, to make reasonably safe for travel, or cause to be made reasonably safe for travel, by the sprinkling of sand or ashes thereon, such paved sidewalks, crosswalks, and places of intersection of alleys with paved sidewalks, and shall, as soon thereafter as the weather shall permit, thoroughly clean, or cause to be thoroughly cleaned, said sidewalks, crosswalks, and places of intersection of alleys with paved sidewalks.

SEC. 3. That it shall be the duty of the Chief Engineer of the United States Army, within the first eight hours of daylight after the ceasing to fall of any snow or sleet, or after the accumulation of ice upon the paved sidewalks within the fire limits of the District of Columbia, to remove or cause to be removed from such sidewalks as are in front of or adjacent to all buildings owned or leased by the United States, except the Capitol buildings and grounds and the Congressional Library building, and from all paved sidewalks or crosswalks used as public thoroughfares in front of, around, or through all public squares, reservations, or open spaces within the fire limits of the District of Columbia, owned or leased by the United States, such snow, sleet, and ice; but in the event of inability to remove such accumulation of snow, sleet, and ice, by reason of the hardening thereof, without injury to the sidewalk, it shall be his duty, within the first eight hours of daylight after the hardening of such snow, sleet, and ice, to make reasonably safe for travel, or cause to be made reasonably safe for travel, by the sprinkling of sand or ashes thereon, such paved sidewalks and crosswalks, and shall, as soon thereafter as the weather shall permit, thoroughly clean said sidewalks and crosswalks.

SEC. 4. In case the snow, sleet, and ice can not be removed from so much of the paved sidewalks within the fire limits of the District of Columbia as front upon or abut such buildings or lots of land as are not owned or held by lease by the District of Columbia or the United States without injury to said sidewalks, because of the hardening thereof, the person, partnership, corporation, joint-stock company, or syndicate in charge or control of such buildings or lots of land, whether as owner, tenant, occupant, lessee, or otherwise, shall, within the first eight hours of daylight after the same has formed, make reasonably safe for travel, or cause to be made reasonably safe for travel, by the sprinkling of sand or ashes thereon, said sidewalks, and shall, as soon thereafter as the weather shall permit, thoroughly clean said sidewalks.

SEC. 5. That in the event of the failure of any person, partnership, corporation, joint-stock company, or syndicate to remove or cause to be removed such snow or ice from the said sidewalks, or to make the same reasonably safe for travel, or cause the same to

be made reasonably safe for travel, as hereinfore provided, it shall be the duty of the Commissioners of the District of Columbia, as soon as practicable after the expiration of the time herein provided for the removal thereof, or for the making of the said sidewalks reasonably safe for travel, to cause the snow and ice in front of such building or lot of land to be removed or to cause the same to be made reasonably safe, as hereinbefore directed to be done by such person, partnership, corporation, joint-stock company, or syndicate in charge or control of such building or lot of land, and the amount of the expense of such removal or such work of making the said sidewalks reasonably safe for travel, shall in each instance be ascertained and certified by the said commissioners to the corporation counsel of the District of Columbia.

SEC. 6. That the corporation counsel is hereby directed and authorized to sue for and recover from such person, partnership, corporation, joint-stock company, or syndicate, the amount of such expense in the name of the District of Columbia, together with a penalty not exceeding \$25 for each offence, with costs, and when so recovered the amount shall be deposited to the credit of the District of Columbia.

SEC. 7. That in order to enable the said commissioners and the Chief of Engineers of the United States Army to comply with their duties under this Act and to carry it into effect there is hereby appropriated the sum of \$10,000, one-half out of the general revenue fund of the District of Columbia, and the other one-half out of any moneys in the Treasury not otherwise appropriated.

Approved, September 16, 1922 (42 St. L. p. 845).

RENTAL FOR VAULTS UNDER SIDEWALKS

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SEC. 7. That hereafter the Commissioners of the District of Columbia are authorized and directed to assess and collect rent from all users of space occupied under the sidewalks and streets in the District of Columbia, which said space is occupied or used in connection with the business of said users.

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Act of September 1, 1916 (39 Stat. p. 716.)

ACT RELATIVE TO ASSESSMENTS FOR COSTS OF PAVING STREETS, ETC.

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SEC. 8. That hereafter the half cost of the paving or repaving of a roadway between the side thereof and the center thereof with sheet asphalt, asphalt block, granite block, vitrified block, cement concrete, bituminous concrete, macadam, or other form of pavement shall be assessed against the property abutting the side of the street so improved, such assessments to be levied and collected as now provided as to alleys and sidewalks: *Provided*, That the advertisement by publication of the commissioners' intention to do such work and the

formal hearing in respect thereto required by law as to alley and sidewalk improvements shall not be required as to roadway improvements.

There shall be included in the area the cost of which is assessable hereunder only the roadway area abutting the property between lines normally projected from the building line of the street being improved at the points of intersection with the building lines of intersecting streets.

There shall be excluded from the cost of the roadway work to be assessed hereunder:

First. The cost of all such work beyond a line twenty feet from the side thereof.

Second. The cost of all such work within the space within which street railway companies are required to pave by law, and nothing herein contained shall be construed as relieving street railway companies from bearing all the expense of paving and repairing streets and avenues between lines two feet exterior to the outer rails of their tracks, as required by section five of the Act providing a permanent form of government for the District of Columbia, approved June eleventh, eighteen hundred and seventy-eight.

Act of September 1, 1916 (39 Stat. L. p. 716).

ZONING LAW

An Act To regulate the height, area, and use of buildings in the District of Columbia and to create a Zoning Commission, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That to protect the public health, secure the public safety, and to protect property in the District of Columbia there is hereby created a Zoning Commission, which shall consist of the Commissioners of the District of Columbia, the officer in charge of public buildings and grounds of the District of Columbia, and the Superintendent of the United States Capitol Building and Grounds, which said commission shall have all the powers and perform all the duties hereinafter specified and shall serve without additional compensation. Such employees of the government of the District of Columbia as may be necessary to carry out the purposes of this Act shall be assigned to such duty by the Commissioners of the District of Columbia without additional compensation.

There is hereby authorized for the expenses of said commission, including the employment of expert services and all incidental and contingent expenses, a sum not to exceed \$5,000, payable one-half out of any money in the United States Treasury not otherwise appropriated and the other half out of the revenues of the District of Columbia.

SEC. 2. That within six months after the passage of this Act and after public notice and hearing as hereinafter provided, the said commission shall divide the District of Columbia into certain districts, to be known, respectively, as height, area, and use districts, and shall adopt regulations specifying the height and area of build-

ings thereafter to be erected or altered therein and the purposes for which buildings and premises therein may be used: *Provided*, That such regulations may differ in the various districts: *Provided further*, That the permissible height of buildings in any district shall not exceed the maximum height of building now authorized upon any street in any part of that district by the Act of Congress approved June 1, 1910, and amendments thereto, regulating the height of buildings in the District of Columbia: *And provided further*, That no such districts shall be established, nor shall any regulations therefor be adopted, nor shall the height, area, or use of buildings to be erected therein be prescribed until said commission has afforded persons interested an opportunity to be heard at a public hearing as hereinafter provided: *And provided further*, That in residence districts the usual accessories of a residence located on the same lot including the office of a physician, dentist, or other person, and including a private garage containing space for not more than four automobiles, shall not be prohibited.

SEC. 3. That wherever, under the provision of this Act, it is required that a public hearing shall be held, notice of the time and place of such hearing shall be published for not less than ten consecutive days in one or more newspapers of general circulation printed and published in the District of Columbia; and such public hearing may be adjourned from time to time: *Provided*, That if the time and place of the adjourned meeting is publicly announced when the adjournment is had, no further notice of such adjourned meeting need be published.

SEC. 4. That after the public hearings herein provided for shall have been concluded, said commission shall definitely determine the number and boundaries of the districts which it is hereby authorized and directed to establish, and shall specify the height and area of the buildings which may thereafter be erected therein, and shall prescribe the purposes for which such buildings thereafter erected may or may not be used. Said districts so established shall not be changed except on order of said commission after public hearing. Said commission may initiate such changes, or they may be initiated upon the petition of the owners affected. Where the proposed change is to add a contiguous area to a use, height, or area district, the owners of at least 50 per centum of the street frontage proposed to be changed must join in the petition: *Provided*, That if the frontage proposed to be changed is not a contiguous area, the owners of at least 50 per centum of a frontage within the area not less than three blocks in length must join in such petition before it may be considered by said commission. No such change shall be made, either by said commission on its own motion or upon such petition, except with the unanimous vote of said commission, if the owners of at least 20 per centum of the frontage proposed to be changed protest against such change.

SEC. 5. That said commission is authorized and empowered to make such orders and adopt such regulations not inconsistent with law as may be necessary to accomplish the purposes and carry into effect the provisions of this Act: *Provided*, That no order or regulation so adopted shall require any change in the plans, construction, or designated use of (a) a building for which a permit shall have been issued, or plans for which shall be on file with the inspector of build-

ings of the District of Columbia at the time the orders or regulations authorized under this Act are promulgated; or (b) a permit for the erection of which shall be issued within thirty days after promulgation of the orders or regulations authorized or adopted under this Act and the construction of which in either of the above cases shall have been diligently prosecuted within a year from the date of such permit and the ground story framework of which, including the second tier of beams, shall have been completed within said year, and which entire building shall be completed according to such plans within two years of the date of the promulgation of such orders or regulations; or (c) prevent the restoration of a building partially destroyed by fire, explosion, act of God or the public enemy, or prevent the continuance of the use of such building or part thereof as such use existed at the time of such partial destruction, or prevent a change of such existing use except under the limitations provided herein in relation to existing buildings and premises: *Provided further*, That no frame building that has been damaged by fire or otherwise more than one-half of its original value shall be restored within the fire limits as provided by the building regulations of the District of Columbia; or (d) prevent the restoration of a wall declared unsafe by the inspector of buildings of the District or by a board of survey appointed in accordance with any existing law or regulation.

SEC. 6. That any lawful use of a building or premises existing at the time of the adoption of orders and regulations made under the authority of this Act may be continued, although such use does not conform with the provisions hereof or with the provisions of such orders and regulations; and such use may be extended throughout the building, provided no structural alteration, except those required by law or regulation, is made therein and no new building is erected. Where the boundary line of any use district divides a lot in a single ownership at the time of the adoption of orders and regulations under the authority of this Act, the commission may permit a use authorized on either portion of such lot to extend to the entire lot, but not more than twenty-five feet beyond the boundary line of the use district.

SEC. 7. That maps of the districts established by said commission and copies of all orders and regulations as to the height and area of buildings to be erected therein and as to the uses to which such buildings may be lawfully devoted, and copies of all other official orders and regulations of the commission shall be filed in the office of the Engineer Commissioner of the District of Columbia. Copies of all orders and regulations shall be published in one or more newspapers printed in the District of Columbia for the information of all concerned.

SEC. 8. That it shall be unlawful to use or permit the use of any building or premises or part thereof hereafter created, erected, changed, or converted wholly or partly in its use or structure until a certificate of occupancy shall have been issued by authority of said zoning commission.

SEC. 9. That buildings erected, altered, or raised, or converted in violation of any of the provisions of this Act or the orders and regulations made under the authority thereof are hereby declared to be common nuisances; and the owner or person in charge of or main-

taining any such buildings, upon conviction on information filed in the police court of the District of Columbia by the corporation counsel or any of his assistants in the name of said District, and which court is hereby authorized to hear and determine such cases, shall be adjudged guilty of maintaining a common nuisance, and shall be punished by a fine of not more than \$100 per day for each and every day such nuisance shall be permitted to continue, and shall be required by said court to abate such nuisance. The corporation counsel of the District of Columbia may maintain an action in the Supreme Court of the District of Columbia in the name of the District of Columbia to abate and perpetually enjoin such nuisance.

SEC. 10. That the Commissioners of the District of Columbia shall enforce the provisions of this Act and the orders and regulations adopted by said Zoning Commission under the authority thereof, and nothing herein contained shall be construed to limit the authority of the Commissioners of the District of Columbia to make municipal regulations as heretofore: *Provided*, That such regulations are not inconsistent with the provisions of this law and the orders and regulations made thereunder. In interpreting and applying the provisions of this Act and of the orders and regulations made thereunder they shall be held to be the minimum requirements for the promotion of the public health, safety, comfort, convenience, and general welfare. This Act shall not abrogate or annul any easements, covenants, or other agreements between parties: *Provided, however*, That as to all future building construction or use of premises where this Act or any orders or regulations adopted under the authority thereof impose a greater restriction upon the use of buildings or premises or upon height of building, or requires larger open spaces than are imposed or required by existing law, regulations, or permits, or by such easements, covenants, or agreements, the provisions of this Act and of the orders and regulations made thereunder shall control.

SEC. 11. That all laws or parts of laws and regulations in conflict with the provisions of this Act are hereby repealed.

Approved, March 1, 1920 (41 Stat. L, pt. 1, p. 500).

CONDEMNATION OF STREETS

An Act To provide for the condemnation of streets or parts of streets under the plan for the permanent system of highways for the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever in the subdivision of a tract of land in the District of Columbia the owner or owners of such tract shall reserve from subdivision any portion thereof, and shall fail to or refuse to dedicate the streets or highways within the reserved portion as shown on the plan of permanent system of highways, the Commissioners of the District of Columbia be, and they are hereby, authorized, in their discretion, to institute condemnation proceedings to acquire for street purposes in accordance with the highway plans any or all land comprised in the said streets within the limits of any portion reserved from sub-

division, which the said Commissioners may deem desirable for the purpose of extending existing or proposed streets or of connecting streets already of record according to the said highway plan.

SEC. 2. That the said condemnation proceedings shall be instituted under and in accordance with the provisions of subchapter one of chapter fifteen of the Code of Law for the District of Columbia: *Provided*, That the entire amount found to be due and awarded by the jury in said proceedings as damages for and in respect of the land condemned for such streets or highways, plus the cost and expenses of said proceedings, shall be assessed by the jury as benefits, under the provisions of said subchapter one of chapter fifteen of said code. And there is hereby appropriated, out of the revenues of the District of Columbia, such amount or amounts as may be necessary to pay the cost and expenses of the condemnation proceeding taken pursuant hereto and for the payment of amounts awarded as damages, to be repaid to the District of Columbia from the assessments for benefits and covered into the Treasury to the credit of the revenues of the District of Columbia.

Approved, March 30, 1910 (36 Stat. L. pt. 1, p. 268).

HOTEL PROPRIETORS AND INNKEEPERS

An Act Establishing the liability of hotel proprietors and innkeepers in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the proprietor of any hotel or inn in the District of Columbia shall provide in such hotel or inn a suitable safe or vault for the safekeeping of any money, jewelry, or other articles of value, other than wearing apparel, belonging to or in the custody of guests, and shall notify the guests thereof by keeping conspicuously posted in the office and on the inside of the entrance door of the sleeping rooms of said hotel or inn a notice printed in distinct English type, such proprietor shall not be liable for the loss of or injury to any such property by theft or otherwise sustained by any guest unless such guest has offered to deliver the same to such proprietor for custody in such safe or vault and such proprietor has omitted or refused to receive it and deposit it in such safe or vault and to give such guest a receipt therefor: *Provided*, That in no case shall such proprietor be liable for the loss or injury to property so deposited in an amount exceeding the sum of \$500, except by special contract in writing, stating the kind and value of property received, the kind and extent of the liability of said proprietor, and the reasonable consideration to be paid for such safekeeping, not in excess of the customary insurance charge or premium, and which said contract shall be signed by said guest and said proprietor or his clerk: *Provided further*, That nothing herein contained shall apply to such an amount of money and such jewelry or other articles of value as is usual, common, or prudent for guests to retain in their rooms.

SEC. 2. That whenever the proprietor of any hotel or inn shall keep posted in a conspicuous manner on the inside of the entrance

door to the sleeping rooms of said hotel or inn a notice printed in distinct English type requiring the guests occupying said rooms to lock or bolt the door of said room and upon leaving said room to lock the door and deposit the key at the office, the proprietor shall not be liable for any baggage stolen from said room if it shall appear that said room was left by the guest unlocked or unbolted, or that the key was not so deposited at the office at the time of the loss of said baggage, unless the loss is directly or indirectly caused by or attributable to the proprietor or his employee or employees.

Approved, December 21, 1920 (41 Stat. L. pt. 1, p. 1081).

WEIGHTS AND MEASURES

An Act To establish standard weights and measures for the District of Columbia; to define the duties of the Superintendent of Weights, Measures, and Markets of the District of Columbia; and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby created an executive department in the government of the District of Columbia which shall be known as the Department of Weights, Measures, and Markets. Such department shall be in charge of a Superintendent of Weights, Measures, and Markets, who shall be appointed by and be under the direction and control of the Commissioners of the District of Columbia, and shall receive a salary of \$2,500 per annum. He shall have the custody and control of such standard weights and measures of the United States as are now or shall hereafter be provided by the District of Columbia, which shall be the only standards for weights and measures in said District.

The commissioners are also authorized to appoint, on the recommendation of the superintendent, such assistants, inspectors, and other employees for which Congress may, from time to time, provide.

SEC. 2. That the superintendent shall, before entering upon the performance of his duties, give bond to the District of Columbia in the penal sum of \$5,000, signed by two sureties or by a bonding company, to be approved by the commissioners, conditioned on the faithful discharge of the duties of his office, and shall take and subscribe an oath or affirmation before the commissioners that he will faithfully and impartially discharge the duties of his office, which bond and oath shall be deposited with the commissioners.

SEC. 3. That the superintendent and, under his direction, his assistants and inspectors, shall have exclusive power to perform all the duties provided in this Act. They shall, at least every six months, and oftener when the superintendent thinks proper, inspect, test, try, and ascertain whether or not they are correct, all weights, scales, beams, measures of every kind, instruments or mechanical devices for weighing or measuring, and all tools, appliances, or accessories connected with any or all such instruments or mechanical devices for weighing or measuring used or employed in the District of Columbia by any owner, agent, leesee, or employee in determining the weight, size, quantity, extent, area, or measurement of quantities, things, produce, or articles of any kind offered for transportation, sale, barter, exchange, hire, or award, or the weight of persons for a

charge or compensation, and shall approve and seal, stamp or mark, in the manner prescribed by the commissioners, such devices or appliances as conform to the standards kept in the office of the superintendent, and shall seize and destroy or mark, stamp, or tag with the word "condemned" such as do not conform to the standards, and shall also mark the date of such condemnation upon the same. Any weight, scale, beam, measure, weighing or measuring device of any kind which shall be found to be unsuitable for the purpose for which it is intended to be used or of defective construction or material shall be condemned. No person shall use or, having the same under his control, shall permit to be used for any of the purposes enumerated in this Act any weight, scale, beam, measure, weighing or measuring device whatsoever unless the same has been approved in accordance with the provisions of this Act within six months prior to such use, or that does not conform to the standards kept in the office of the superintendent of Weights, Measures, and Markets, or which, having been condemned, has not thereafter been approved as provided in this Act.

Any person who shall acquire or have in his possession after the passage of this Act any unapproved scale, weighing instrument, or nonportable measure or measuring device, subject to inspection or test under the provisions of this Act, shall notify the superintendent in writing at his office, giving a general description thereof, and the street and number or other location where same may be found, and it shall be the duty of the superintendent to cause the same to be inspected and tested within a reasonable time after receipt of such notice. Any person who shall acquire or have in his possession after the passage of this Act any unapproved portable measure or measuring device subject to inspection or test shall cause the same to be taken to the office of the superintendent for inspection and test.

Every peddler, hawker, huckster, transient merchant, or other person with no fixed or established place of business shall, before using any weight, scale, measure, weighing or measuring device for any of the purposes enumerated in this Act, cause the same to be taken to the office of the superintendent for inspection and test semi-annually, and shall not use for the purposes herein mentioned any weight, scale, measure, weighing or measuring device which has not been approved within six months prior to the time of such use.

Nothing herein shall be construed to require the superintendent to test any weighing or measuring device belonging to the United States.

SEC. 4. That no person shall use or, having the same under his control, permit to be used, any weight, scale, measure, weighing or measuring device, or any attachment or part thereof after the same has been altered or repaired without the same having been inspected and approved as provided herein after such alterations or repairs have been made, and no persons shall alter, obliterate, detach, obscure, or conceal any condemnation seal, stamp, mark, tag, or label, attached or impressed by the superintendent or any of his assistants or inspectors, without written permission of the superintendent.

SEC. 5. That no person shall neglect, fail, or refuse to exhibit any weight, scale, beam, measure, weighing or measuring device, subject to inspection or test under the provisions of this Act, to the superintendent or any of his assistants or inspectors for the purpose of inspection and test, and no person shall in any manner obstruct, hinder,

or molest the superintendent or any of his assistants, inspectors, or other employees in the performance of their duties.

SEC. 6. That the superintendent shall keep in his office a record of weighing and measuring devices inspected, which record shall show the type of device, the name and address of the owner, the date of inspection, and whether the same was approved or condemned. Such record shall be open to the public during regular office hours.

SEC. 7. That no person shall sell, offer for sale, keep, or expose for sale anywhere in the District of Columbia any commodity of any kind as a weight, measure, or numerical count greater than the actual or true weight, measure, or numerical count thereof, and no person shall take or attempt to take more than the actual and true weight, measure, or numerical count of any commodity, when, as buyer, he is permitted by the seller to determine the weight, measure, or numerical count thereof.

SEC. 8. That when any commodity is sold by weight it shall be net weight. When any commodity, except coal, is sold by the ton, it shall be understood to mean two thousand pounds avoirdupois. Coal shall be sold by the long ton, consisting of two thousand two hundred and forty pounds avoirdupois.

SEC. 9. That no person, firm, or corporation shall erect, operate, or maintain, or cause to be erected, operated, or maintained within the District of Columbia any coin-in-the-slot machine or automatic vending device without placing in charge thereof some responsible person. No such machine shall be maintained for use when the same is not in perfect working order, and the person in charge as well as the owner of such machine or device shall be held responsible for operating or maintaining any such machine or device which is not in perfect working order. A sign or placard shall be placed on every such machine or device in a conspicuous place and shall contain the name and business address of the owner and of the person in charge of such machine or device, and shall state that the person in charge of such machine or device will refund to any person money deposited by him for which the commodity or service promised expressly or impliedly has not been received, and such person shall so refund such money.

SEC. 10. That every person, firm, or corporation shall, when a sales ticket is given with a purchase, cause such sales ticket to show the correct name and address of such person, firm, or corporation and the weight, measure, or numerical count, as the case may be, of each commodity sold to the purchaser, and every such person, firm, or corporation is hereby required to deliver such sales ticket to such purchaser when requested to do so by such purchaser at the time of the sale.

SEC. 11. That it shall be unlawful to sell or offer for sale in the District of Columbia any coal, charcoal, or coke in any other manner than by weight. No person shall deliver or attempt to deliver any coal, charcoal, or coke without accompanying same by a delivery ticket and a duplicate thereof, the original of which shall be in ink or other indelible substance, on each of which shall be expressed distinctly in pounds, avoirdupois, the gross weight of the load, the tare of the delivery vehicle or receptacle, and the net weight of coal, charcoal, or coke contained in the vehicle or receptacle used in mak-

ing delivery, with the name and address of the purchaser and the name and address of the person, firm, or corporation from whom or which purchased. Upon demand of the superintendent or any of his assistants or inspectors upon the person in charge of the vehicle of delivery, the original of these tickets shall be surrendered to the official making such demand. The duplicate ticket shall be delivered to the purchaser of said coal, charcoal, or coke, or to his agent or representative, at the time of delivery of such coal, charcoal, or coke. Upon demand of the superintendent or any of his assistants or inspectors, or of the purchaser or intended purchaser, his agent or representative, the person delivering such coal, charcoal, or coke shall convey the same forthwith to some public scale, or to any legally approved private scale in the District of Columbia, the owner of which may consent to its use, and shall permit the verifying of the weight, and after the delivery of such coal, charcoal, or coke shall return forthwith with the wagon or other conveyance used to the same scale and permit to be verified the weight of the wagon or other conveyance: *Provided*, That when coal, charcoal, or coke is sold in a quantity less than two hundred and eighty pounds and is not weighted in a wagon, cart, or other vehicle, it shall be sufficient for the seller to deliver to the purchaser, his agent or representative, a ticket showing the name and address of the vender, the name of the purchaser, and the true net weight of the coal, charcoal, or coke so sold or delivered: *Provided further*, That when coal, charcoal, or coke is sold in packages of fifty pounds or less, it shall be sufficient to plainly mark each package with the name of the person, firm, or corporation making such package and the true net weight of the coal, charcoal, or coke contained therein.

No coal, charcoal, or coke shall be sold which contains at the time the weight is taken more water or other liquid substance than is due to the natural condition of the coal, charcoal, or coke.

Every vendor of coal, charcoal, or coke shall cause his name and address to be conspicuously displayed on both sides of every vehicle used by or for him for the sale or delivery of coal, charcoal, or coke.

SEC. 12. That it shall be unlawful to sell, within the District of Columbia, any ice in any manner other than by weight, such weight to be ascertained at the time of delivery of such ice, and every person, or in case of a firm, copartnership, or corporation, the person in charge of its business in the District of Columbia, engaged in the sale of ice shall keep on each of his or its wagons or other vehicles used in the sale or delivery of ice, while in use, a scale suitable for weighing ice which has been tested and approved in accordance with the provisions of this Act. Every scale used for weighing ice in making sales in quantities of one hundred pounds or less shall have graduations of one pound or less. Scales used for weighing ice in making sales in quantities of more than one hundred pounds may have graduations of five pounds or less.

"SEC. 13. That the standard loaf of bread manufactured for sale, sold, offered, or exposed for sale in the District of Columbia shall weigh one pound avoirdupois, but bread may also be manufactured for sale, sold, offered, or exposed for sale in loaves of one-half pound, one pound and a half, or multiples of one pound, but shall not be manufactured for sale, sold, offered, or exposed for sale in other than

the aforesaid weights. Every loaf of bread manufactured for sale, sold, offered, or exposed for sale in the District of Columbia shall have affixed thereon, in a conspicuous place, a label at least one inch square, or, if round, at least one inch in diameter, upon which label there shall be printed in plain bold-face Gothic type, not smaller than twelve point, the weight of the loaf in pound, pounds, or fraction of a pound, as the case may be, whether the loaf be a standard loaf or not, the letters and figures of which shall be printed in black ink upon white paper. The business name and address of the maker, baker, or manufacturer of the loaf shall also be plainly printed on each such label. Every seller of bread in the District of Columbia shall keep a suitable scale which shall have been inspected and approved in accordance with the provisions of this Act in a conspicuous place in his bakery, bakeshop, or store, or other place where he is engaged in the sale of bread, and shall, whenever requested by the buyer, and in the presence of the buyer, weigh the loaf or loaves of bread sold or offered for sale. Nothing herein shall apply to crackers, pretzels, buns, rolls, scones, or to loaves of fancy bread weighing less than one-fourth of one pound avoirdupois, or to what is commonly known as stale bread, provided the seller shall, at the time the sale is made, expressly state to the buyer that the bread so sold is stale bread: Provided, That any loaf of bread weighing within 10 per centum in excess or within 4 per centum less than standard weight shall be deemed of legal weight."

Approved, August 24, 1921 (42 Stat. L. 201).

SEC. 14. That bottles or jars used for the sale of milk or cream shall be of the capacity of one gallon, half-gallon, three pints, one quart, one pint, half-pint, or one gill when filled to the bottom of the cap seat, stopple, or other designating mark. Such bottles or jars shall have clearly blown or otherwise permanently marked in the side of each such bottle or jar or printed on the cap or stopple the name and address of the person, firm, or corporation who or which shall have bottled such milk or cream. Any person who uses, for the purpose of selling milk or cream, bottles or jars which do not comply with the requirements of this section shall be deemed guilty of using false measure.

SEC. 15. That standard containers for the sale of fruits, vegetables, and other dry commodities in the District of Columbia shall be as follows:

(a) That standard barrel for fruits, vegetables, and other dry commodities other than cranberries, shall be of the following dimensions when measured without distention of its parts: Length of stave, twenty-eight and one-half inches; diameter of heads, seventeen and one-eighth inches; distance between heads, twenty-six inches; circumference of bulge, sixty-four inches, outside measurement; and the thickness of staves not greater than four-tenths of an inch: *Provided*, That any barrel of a different form having a capacity of seven thousand and fifty-six cubic inches shall be a standard barrel. The standard barrel for cranberries shall be of the following dimensions when measured without distention of its parts: Length of staves, twenty-eight and one-half inches; diameter of head, sixteen and one-fourth inches; distance between heads, twenty-five and one-

fourth inches; circumference of bulge, fifty-eight and one-half inches, outside measurement; and the thickness of staves not greater than four-tenths of an inch. It shall be unlawful to sell, offer, or expose for sale in the District of Columbia a barrel containing fruits or vegetables or any other dry commodity of less capacity than the standard barrels defined in this Act, or subdivisions thereof known as the third, half, and three-quarter barrel.

(b) Standards for Climax baskets for grapes and other fruits and vegetables shall be the two-quart basket, four-quart basket, and twelve-quart basket, respectively.

The standard two-quart Climax basket shall be of the following dimensions: Length of bottom piece, nine and one-half inches; width of bottom piece, three and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, three and seven-eighths inches, outside measurement; top of basket, length eleven inches and width five inches, outside measurement. Basket to have a cover five by eleven inches, when a cover is used.

The standard four-quart Climax basket shall be of the following dimensions: Length of bottom piece, twelve inches; width of bottom piece, four and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, four and eleven-sixteenths inches, outside measurement; top of basket, length fourteen inches; width six and one-fourth inches, outside measurement. Basket to have cover six and one-fourth inches by fourteen inches, when cover is used.

The standard twelve-quart Climax basket shall be of the following dimensions: Length of bottom piece, sixteen inches; width of bottom piece, six and one-half inches; thickness of bottom piece, seven-sixteenths of an inch; height of basket, seven and one-sixteenth inches, outside measurement; top of basket, length nineteen inches, width nine inches, outside measurement. Basket to have cover nine inches by nineteen inches, when cover is used.

(c) The six-basket carrier crate for fruits and vegetables shall contain six four-quart baskets, each basket having a capacity of two hundred and sixty-eight and eight-tenths cubic inches.

(d) The four-basket flat crate for fruits and vegetables shall contain four three-quart baskets, each basket having a capacity of two hundred and one and six-tenths cubic inches.

(e) The standard box, basket, or other container for berries, cherries, shelled peas, shelled beans, and other fruits and vegetables of similar size shall be of the following capacities standard dry measure: One-half pint, pint, and quart. The one-half pint shall contain sixteen and eight-tenths cubic inches; the pint shall contain thirty-three and six-tenths cubic inches; the quart shall contain sixty-seven and two-tenths cubic inches.

(f) Standard lug boxes for fruits and vegetables shall be the one-half bushel box and the one-bushel box.

The one-half bushel lug box shall be of the following inside dimensions: Length, seventeen inches; width, ten and five-tenths inches; depth, six inches.

The one-bushel lug box shall be of the following inside dimensions: Length, twenty and three-fourths inches; width, thirteen inches; depth, eight inches; and no lug box of other than the foregoing dimensions shall be used in the District of Columbia.

(g) The standard hampers for fruits and vegetables shall be the one-peck hamper, one-half bushel hamper, one-bushel hamper, and one and one-half bushel hamper.

The one-peck hamper shall contain five hundred and thirty-seven and six-tenths cubic inches; the one-half-bushel hamper shall contain one thousand and seventy-five and twenty-one one-hundredths cubic inches. The one-bushel hamper shall contain two thousand one hundred and fifty and forty-two one-hundredths cubic inches, and the one and one-half bushel hamper shall contain three thousand two hundred and twenty-five and sixty-three one-hundredths cubic inches.

(h) The standard round-stave baskets for fruits and vegetables shall be the one-half bushel basket, one-bushel basket, one and one-half bushel basket, and two-bushel basket.

The one-half-bushel basket shall contain one thousand and seventy-five and twenty-one one-hundredths cubic inches. The one-bushel basket shall contain two thousand one hundred and fifty and forty-two one-hundredths cubic inches. The one-and-one-half-bushel basket shall contain three thousand two hundred and twenty-five and sixty-three one-hundredths cubic inches, and the two-bushel basket shall contain four thousand three hundred and eighty-four one-hundredths cubic inches.

(i) The standard apple box shall contain two thousand one hundred and seventy-three and five-tenths cubic inches and be of the following inside dimensions: Length, eighteen inches; width, eleven and one-half inches; depth, ten and one-half inches.

(j) The standard pear box shall be of the following inside dimensions: Length, eighteen inches; width, eleven and one-half inches; depth, eight and one-half inches.

(k) The standard onion crate shall be of the following inside dimensions: Length, nineteen and five-eighths inches; width, eleven and three-sixteenths inches; depth, nine and thirteen-sixteenths inches.

(1) No person shall sell, offer, or expose for sale in the District of Columbia any fruits, vegetables, grain, or similar commodities in any manner except in the standard containers herein prescribed or by weight or numerical count; and no person shall sell, offer, or expose for sale, except by weight or numerical count, in the District of Columbia any commodity in any container herein prescribed which does not contain, at the time of such offer, exposure, or sale, the full capacity of such commodity compactly filled: *Provided*, That fresh beets, onions, turnips, rhubarb, and other similar vegetables, usually and customarily sold by the bunch, may be sold by the bunch.

All kale, spinach, and other similar leaf vegetables shall be sold at retail by net weight.

SEC. 16. That nothing in this Act contained shall be construed as permitting the use as a dry measure or substituting for a dry measure any of the following containers: Barrels, boxes, lug boxes, crates, hampers, baskets, or climax baskets; and the use of any such container as a measure is hereby expressly prohibited, and the user shall be fined or imprisoned as herein provided for other violations of this Act.

SEC. 16½. That no person shall sell, offer, or expose for sale in the District of Columbia any food in package form unless the quantity

of contents is plainly and conspicuously marked on the outside of each package in terms of weight, measure, or numerical count. The commissioners are authorized to establish and allow reasonable variation, tolerances, and exemptions as to small packages.

SEC. 17. That a cord of wood shall contain one hundred and twenty-eight cubic feet. Wood more than eight inches in length shall be sold by the cord or fractional part thereof, and when delivered shall contain one hundred and twenty-eight cubic feet per cord when evenly and compactly stacked. Split wood, eight inches or less in length, may be sold by such standard loads as shall be fixed by the commissioners.

SEC. 18. That the standard liquid gallon shall contain two hundred and thirty-one cubic inches; the half gallon, one hundred and fifteen and five-tenths cubic inches; the quart, fifty-seven and seventy-five hundredths cubic inches; the pint, twenty-eight and eight hundred and seventy-five thousandths cubic inches; the half pint, fourteen and four hundred and thirty-seven thousandths cubic inches; the gill, seven and two hundred and eighteen thousandths cubic inches; the fluid ounce, one and eight-tenths cubic inches; and no liquid measure of other than the foregoing capacities, except multiples of the gallon, shall be deemed legal liquid measure in the District of Columbia.

SEC. 19. That shucked oysters shall be sold only by liquid measure or numerical count, and whenever there is included in the sale by measure of shucked oysters more than 10 per centum of oyster liquid or other liquid substance, the vendor shall be deemed guilty of selling short measure.

All fish shall be sold by avoirdupois weight.

SEC. 20. That every user of an automatic measuring pump or similar device, shall, when the supply of the commodity which he is measuring for sale with such pump or similar device, is insufficient to deliver correct measure of such commodity by the usual or customary method of operating such pump or device or when, for any cause whatever, such pump or device does not, by the usual or customary method of operating same, deliver correct measure, place a sign with the words, "Out of use" in a conspicuous place on such pump or device where it may readily be seen, and shall forthwith cease to use the same until his supply of such commodity is replenished or until such pump or device is repaired, adjusted, or otherwise put in condition to deliver correct measure. All automatic measuring pumps or other similar measuring devices in use shall be subject to inspection, and approval or condemnation, whether used for measuring or not.

SEC. 21. That whenever any commodity is offered for sale at a stated price for a stated quantity, a smaller quantity shall be sold at a pro rata price unless the purchaser is informed to the contrary at the time of sale.

SEC. 22. That the superintendent, or under his direction, his assistants and inspectors, shall from time to time weigh or measure and inspect packages or amounts of commodities of whatever kind kept for sale, offered or exposed for sale, sold, or in the process of delivery, in order to determine whether or not the same are kept for sale, offered for sale, or sold in accordance with the provisions of

this Act, and no person shall refuse to permit such weighing, measuring, or inspection whenever demanded by the superintendent or any of his assistants or inspectors.

SEC. 23. That it shall be unlawful for the superintendent or any employee of his office to vend any weights, measures, weighing or measuring device, or to offer or expose the same for sale, or to be interested, directly or indirectly, in the sale of same.

SEC. 24. That there is hereby conferred upon the superintendent, his assistants and inspectors, police power, and in the exercise of their duties they shall, upon demand, exhibit their badges to any person questioning their authority; and they are authorized and empowered to make arrests of any person violating any of the provisions of this Act. The superintendent, his assistants, and inspectors may, for the purpose of carrying out and enforcing the provisions of this Act and in the performance of their official duties, with or without formal warrant, enter or go into or upon any stand, place, building, or premises, except a private residence, and may stop any vendor, peddler, dealer, vehicle, or person in charge thereof for the purpose of making inspections or tests.

SEC. 25. That the commissioners are hereby authorized and empowered to establish tolerances and specifications for scales, weights, measures, weighing or measuring instruments or devices, and containers used in the District of Columbia. The commissioners shall prescribe and allow for barrels, containers, and packages, provided for in this Act, the same specifications, variations, or tolerances that have been prescribed or established, or that may hereafter be prescribed or established for like barrels, containers, or packages by any officer of the United States in accordance with any requirement of an Act of Congress.

SEC. 26. That the commissioners are authorized to appoint public weighmasters and grant licenses for the location of public scales in the District of Columbia under such regulations as they may prescribe, and authorize such weighmasters to charge such fees as the commissioners may approve and fix in advance, and they may grant permits, revocable on thirty days' notice, for the location of such public scales on public space under their control. No person other than a duly appointed and qualified public weighmaster shall do public weighing or make any charge or accept any compensation therefor.

SEC. 27. That the powers and duties granted to and imposed on the superintendent by this Act are also hereby granted to and imposed on his assistants and inspectors when acting under his instructions.

SEC. 28. That the superintendent, under the direction of the commissioners, shall have supervision of all produce and other markets owned by the District of Columbia, shall enforce such regulations regarding the operation of the same as the commissioners may make, shall make such investigations regarding the sale, distribution, or prices of commodities in the District of Columbia as the commissioners may direct, and shall make reports and recommendations in connection therewith.

SEC. 29. That wherever the word "commissioners" is used in this Act it shall be construed to mean the Commissioners of the District of Columbia. Wherever the word "superintendent" is

used in this Act, it shall be construed to mean the superintendent of weights, measures, and markets.

SEC. 30. That the word "person," as used in this Act, shall be construed to include copartnerships, companies, corporations, societies, and associations. Wherever any word in this Act is used in the singular, it shall be construed to mean either singular or plural, and wherever any word in this Act is used in the plural, it shall be construed to mean either plural or singular, as the circumstances demand.

SEC. 31. That each section of this Act, and every provision of each section, is hereby declared to be an independent section or provision, and the holding of any section or provision of any section to be void, ineffective, or unconstitutional for any cause whatever shall not be deemed to affect any other section or provision thereof.

SEC. 32. That any person violating any of the provisions of this Act shall be punished by a fine not to exceed \$500, or by both such fine and imprisonment not to exceed six months. All prosecutions under this Act shall be instituted by the corporation counsel or one of his assistants in the police court of the District of Columbia.

SEC. 33. That this Act shall become operative ninety days after its passage. The Act entitled "An Act for the appointment of a sealer and assistant sealer of weights and measures in the District of Columbia, and for other purposes," approved March 2, 1895, as amended, and the Act entitled "An Act defining the standard shape and size of dry measures in use in the District of Columbia, and for other purposes," approved May 30, 1896, are hereby repealed, such repeal to be effective when this Act becomes operative.

Approved, March 3, 1921 (41 St. L. pt. 1, p. 1217 et seq.).

MARINE INSURANCE

An Act To regulate marine insurance in the District of Columbia, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I.—DEFINITIONS

SECTION 1. That whenever used in this Act—

"Marine insurance" means insurance against any and all kinds of loss of or damage to vessels, craft, cars, aircraft, automobiles, and other vehicles, whether operated on or under water, land, or in the air, in any place or situation, and whether complete or in process of or awaiting construction; also all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, including money loaned on bottomry or respondentia, valuable papers, and all other kinds of property and interests therein, including liabilities and liens of every description, in respect to any and all risks and perils while in course of navigation, transit, travel, or transportation on or under any seas or other waters, on land or in the air or while in preparation for or while waiting the same or during any delays, storage, transship-

ment, or reshipment incident thereto, including builders' risks, war risks, and for loss of or damage to property or injury or death of any person, whether legal liability results therefrom or not, during, awaiting, or arising out of navigation, transit, travel, or transportation, or the construction or repair of vessels;

"Marine insurance company" means any persons, companies, or associations authorized by this Act to write marine insurance within the District;

"Insurance company" or "company" means any insurer, incorporated or otherwise;

"Domestic company" means an insurance company organized under the laws of the District of Columbia;

"District" means the District of Columbia;

"Superintendent" means the superintendent of insurance of the District of Columbia.

SEC. 2. That, unless the context of any sections under this Act expressly indicate otherwise, the laws of the District relating to the powers and duties of the superintendent, making of examinations, filing of financial and other statements, legal process, organization and licensing of companies, certification and supervision of agents, deposit of assets, impairment and liquidation proceedings, and other requirements pertaining to insurance in general, shall, in so far as they are made applicable by the terms of such laws, or by the terms of this Act, apply to all marine insurance companies transacting business within the District: *Provided*, That, with respect to the filing of statements, the superintendent shall accept a photographic copy of a single original, or a certified copy from the insurance department of the State where the company is organized or has its principal office.

TITLE II.—KINDS OF INSURANCE THAT MAY BE WRITTEN

SEC. 3. That a marine, fire-marine, or fire insurance company may be formed, admitted or licensed to write any or all insurance and reinsurance comprised in any one or more of the following numbered subdivisions:

First. On marine risks as described in section 1 of this Act under the definition of "marine insurance."

Second. On property and rents and use and occupancy, against loss or damage by fire, lightning, tempest, earthquake, hail, frost, snow, explosion (other than explosion of steam boilers or flywheels), breakage or leakage of sprinklers or other apparatus erected for extinguishing fires, and on such apparatus against accidental injury; and against liability of the insured for such loss or damage; and on automobiles against loss or damage from collision or theft, and against liability of the owner or user for injury to person or property caused by his automobile.

Third. Against bodily injury or death by accident, and against disablement resulting from sickness, and every insurance appertaining thereto, including quarantine and identification.

Fourth. Against liability of the insured for the death or disability of another.

Fifth. Against loss of or damage to property resulting from causes other than fire, marine and inland navigation hazards, and against

liability of the insured for such loss or damage, and on motor vehicles against fire, marine and inland navigation hazards, and against personal injury and death, and liability of the insured therefor, from explosions of steam boilers and engines, pipes and machinery connected therewith, and breakage of flywheels or machinery, and to make and certify inspections thereof; and against loss of use and occupancy from any cause; against loss by burglary, theft, and forgery.

Sixth. Against loss or damage from failure of debtors to pay their obligations to the insured.

Seventh. Against loss from encumbrances on or defects in titles.

Eighth. Against loss or damage by theft, injury, sickness, or death of animals, and to furnish veterinary services.

Ninth. Against any loss or liability arising from any other casualty or hazard not contrary to public policy, other than that appertaining to or connected with (1) life insurance (including the granting of endowments and annuities), and (2) fidelity and surety bonding.

An insurance company organized for the transaction of one or more of the kinds of insurance permitted under subdivisions three to nine, inclusive, of this section, shall also, if complying with this Act, be admitted or licensed to write any or all insurance and reinsurance comprised in any one or more of the other subdivisions of this section: *Provided*, That nothing in this section shall be construed as preventing any insurance company, now formed, admitted, or licensed to transact insurance in the District, from continuing the writing of those kinds of insurance which it may have been authorized to write on the date when this Act goes into effect.

Every company formed, admitted, or licensed to transact in the District any of the kinds of insurance permitted by the several numbered subdivisions of this section shall maintain separate and distinct reserves for each kind of insurance so written, and if a stock company shall not transact the business of insurance in the District unless—

(a) It has a capital stock actually paid in, in cash or invested as provided by law, of at least \$100,000 for the insurance specified in any one subdivision of this section, nor unless it has a surplus of money or other lawful assets over its authorized capital and all other liabilities of at least \$50,000;

(b) With an additional \$50,000 of capital stock and \$25,000 of surplus for the insurance authorized by any other subdivision of this section and which may be transacted by such company;

(c) That every company writing more than one class of insurance, as authorized in the several subdivisions of this section, shall keep a separate account of all receipts in respect to each class of insurance, as directed by the superintendent, and the receipts in respect to each class of insurance shall be carried to and form a separate insurance fund with an appropriate name, which fund, exclusive of the capital stock and general surplus of the company, shall be as absolutely the security of the policyholders of that class as though it belonged to a company writing no other business than the insurance business of that class, and shall not be liable for any contracts of the company for which it would not have been liable had the business of the company been only that of insurance of that class, and shall not

be applied, directly or indirectly, for any purposes other than those of the class of insurance to which the fund is applicable: *Provided*, That nothing in this subsection shall require the investments of any such fund to be kept separate from the investments of any other fund: *Provided further*, That nothing in this subsection shall be construed as preventing a company, at the end of each calendar year, from declaring dividends out of profits earned in any particular class of insurance, or from allocating such profits, either in part or in whole, to its general surplus: *And provided further*, That nothing in this section shall be applicable to companies now operating, or which shall hereafter operate in the District, known as life, health, and accident companies, under section 653 of the code.

Corporations for the sole purpose of reinsuring risks insured by other companies may be organized, or admitted, within the District in the same manner as prescribed for other companies. Such reinsurance companies may transact business with any other insurer or reinsurer, and such reinsurance may include all classes of insurance that may be lawfully written: *Provided*, That any reinsurance company, organized or admitted to reinsure one or more of the enumerated classes of insurance, shall be required to have an aggregate capital and surplus equal to the capital and surplus provided by this section for the direct writing of each class of insurance, and shall be required to hold reserves in the same amount and manner as now required of other companies for each such class of insurance which, by the provisions of its charter, it is authorized to transact. Such reinsurance companies shall comply with all other sections of this Act, and with any other law of the District, regulating direct-writing companies, in so far as the same may be applicable.

SEC. 4. That no domestic mutual company shall be organized or licensed within the District unless it has applications from at least two hundred persons for each class of insurance (as enumerated under the several subdivisions of section 3) it may be authorized to write aggregating not less than \$500,000, the maximum amount of insurance applied for in any application on any risk not exceeding one-half of 1 per centum of the aggregate amount, nor three times the average amount of insurance applied for in the several applications. No such mutual company shall be so licensed for any of the classes of insurance as allowed under the several subdivisions of section 3 unless it has received in cash, with respect to each such class of insurance written, at least one advanced periodical premium on each such application, aggregating at least \$10,000; but if the applications are for employers' liability or workmen's compensation insurance, the premiums on such applications shall aggregate at least \$25,000, and each employer shall be considered a separate risk; nor unless it has a surplus of \$10,000 in money or other lawful investments above its liabilities, including the liability equal to the aggregate amount of premiums so advanced.

SEC. 5. That an insurance company organized under laws other than the laws of the District and desiring to transact business in the District shall satisfy the superintendent that it has, if a capital stock company, a paid-up capital and a surplus of assets, invested in accordance with the laws of the State under which it is organized, over its entire authorized capital and all other liabilities, at least equal to the capital and surplus prescribed under section 3 of this

Act for the writing of various kinds of insurance; and, if a company without capital stock or an interinsurance exchange, that it has a surplus of assets, invested according to the laws of the State under which it is organized, over all its liabilities, of \$100,000; or if a mutual company other than a life insurance company that it has a surplus over liabilities amounting to \$100,000, or in lieu thereof a surplus amounting to \$10,000 and an additional contingent liability of its policyholders equal to not less than the cash premium expressed in the policies in force; or if a company organized under a foreign Government, Province, or State, that it has a surplus of assets invested according to the laws of the District or of the State in the United States where it has its deposit, held in the United States in trust for the benefit and security of all its policyholders in the United States, over all its liabilities in the United States, of at least \$150,000, and, if writing more than one class of insurance as enumerated and allowed under section 3 of this Act, an additional \$75,000 for each such additional kind of insurance written; and such company so organized under the laws of a foreign Government or State shall also either deposit with the superintendent securities of the amount and value of \$150,000 (or such larger amount as may be required by this section if the company writes more than one class of insurance) and of the classes in which insurance companies are permitted by this Act to make investments, or with the official of a State of the United States, authorized by the law of such State to accept such deposit, securities of the amount and value of \$150,000 (or such larger amount as may be required by this section if the company writes more than one class of insurance), of the classes in which life insurance companies of such State are permitted to make their investments, and such deposits shall be made for the benefit and security of all the policy-holders of such company in the United States, and the company shall file with the superintendent the certificate of such official of any such deposit with such official of any such State.

TITLE III.—REINSURANCE

SEC. 6. That every insurance or reinsurance company, authorized to transact insurance or reinsurance within the District, may reinsure any part of an individual risk in another company having power to make such reinsurance, and with the consent of the superintendent may reinsure all of its risks, within any class of insurance as enumerated under the several subdivisions of section 3 of this Act, in another company. But no credit shall be taken for the reserve or unearned premium liability on such reinsurance unless the company accepting the reinsurance is licensed by the superintendent, or unless it is licensed in one or more States in the United States and shows the same standards of solvency as would be required if it were at the time of such reinsurance authorized in the District to insure risks of the same kind as those reinsured.

In case such reinsurance is effected with an insurer so authorized, or so recognized for reinsurance in this District, the ceding insurer shall thereafter be charged on the gross premium basis with an unearned premium liability representing the proportion of each obligation retained by it, and the insurer to which the business is

ceded shall be charged with an unearned premium liability representing the proportion of such obligation ceded to it calculated in the same way. The two parties to the transaction shall together carry the same reserve which the ceding insurer would have carried had it retained the risk.

The superintendent shall require schedules of reinsurance to be filed by every insurer at the time of making the annual report and at such other times as he may direct.

TITLE IV.—UNEARNED PREMIUM RESERVE

SEC. 7. That with respect to marine insurance risks, the unearned premium shall be found by computing 50 per centum of the amount of premiums received and receivable on unexpired risks on time policies running one year or less from date of policy, and 100 per centum of the amount of premiums on all unexpired voyage and transit risks. As a basis for unearned premium reserves, unexpired voyage or transit risks shall be deemed to expire within thirty days on the average. Every insurance company shall so compute such unearned premium in its annual and other financial statements.

TITLE V.—TAXES

SEC. 8. That with the exception of license fees, real estate and personal property taxes, and a tax on investment income derived from funds representing reserves, capital stock and surplus as defined by this Act, every insurance company organized, admitted, or licensed to transact business within the District shall, with respect to marine insurance written by it within the District, be taxed only on that proportion of the total underwriting profit of the company from marine insurance written within the United States which the net premiums of the company from marine insurance written within the District bear to the total net marine premiums of the company written within the United States. The term "underwriting profit," as used herein, shall be arrived at by deducting from the premiums earned on marine insurance contracts written within the United States during the calendar year (1) the losses incurred and (2) expenses incurred, including all taxes, in connection with such business.

Premiums earned on marine insurance contracts written during the calendar year shall be arrived at as follows:

(1) Gross premiums on marine insurance contracts written during the calendar year, less return premiums and premiums paid for reinsurance.

(2) Add unearned premiums on outstanding marine business at the end of the preceding calendar year.

(3) Deduct unearned premiums on outstanding marine business at the end of the current calendar year.

Losses incurred, as used herein, shall mean gross losses incurred during the calendar year under marine insurance contracts written within the United States, less reinsurance claims collected or collectible and salvages or recoveries collected or collectible from any source applicable to aforesaid losses.

Expenses incurred shall include—

(1) Specific expenses incurred, consisting of all agency commissions, agency expenses, taxes, licenses, fees, loss-adjustment expenses, and all other expenses incurred directly and specifically for the purpose of doing a marine insurance business.

(2) General expenses incurred, consisting of that proportion of general or overhead expenses, such as salaries of officers and employees, printing and stationery, all Federal Government taxes, and all other expenses not chargeable specifically to a particular class of insurance which the net premiums received from marine insurance bear to the total net premiums received by the company from all classes of insurance written during the current calendar year.

SEC. 9. That every company transacting marine insurance in the District shall set forth in its annual statement to the superintendent, and in the form prescribed by him, all the items pertaining to its insurance business as enumerated and prescribed in the preceding section. To determine the basis of the tax on underwriting profit, every company which has been writing marine insurance for five years shall furnish the superintendent a statement of all of the aforementioned items, in the form prescribed by him, for each of the preceding five calendar years. A company which has not been writing marine insurance for five years shall furnish to the superintendent a statement of all of the aforementioned items for each of the calendar years during which it has written marine insurance.

If the superintendent finds the report of the company reporting correct, he shall, if the company has transacted marine insurance for five years, (1) ascertain the total average annual underwriting profit, as defined by this Act, derived by the company from its marine insurance business written within the United States during the last preceding five calendar years, (2) ascertain the proportion which the average net annual premiums of the company from marine insurance written by it in the District during the last preceding five calendar years bear to the average total net marine premiums of the company during the same five years, (3) compute an amount of 5 per centum on this proportion of the aforementioned average annual underwriting profit of the company from marine insurance, and (4) charge the amount of tax thus computed to such company as a tax upon the marine insurance written by it in the District during the current calendar year. Thereafter the superintendent shall each year compute the tax, according to the method described in this section, upon the average annual underwriting profit of such company from marine insurance during the preceding five years, including the current calendar year; namely, at the expiration of each current calendar year, the profit or loss on the marine insurance business of that year is to be added or deducted, and the profit or loss upon the marine insurance business of the first calendar year of the preceding five-year period is to be dropped, so that the computation of underwriting profit for purposes of taxation under this Act will always be on a five-year average: *Provided, however,* That a company which has not been writing marine insurance in the District for five years shall, until it has transacted such business in the District for that number of years, be taxed on the basis of the annual average underwriting profit on marine insurance written within the United States during the preceding five years as averaged for all companies re-

porting to the superintendent for the current calendar year and which have been transacting marine insurance in the District for the past five years: *Provided further*, That, if at any time none of the companies reporting to the superintendent shall have written marine insurance in the District for five years, a company which has not been writing marine insurance in the District for five years shall be taxed on the basis of an annual average underwriting profit as averaged for all companies reporting to the superintendent for the number of years during which they have written marine insurance in the District, subject, however, to an adjustment in the tax as soon as the superintendent, in accordance with the provisions of this section, is enabled to compute the tax on the aforementioned five-year basis: *And provided further*, That in the case of mutual companies the superintendent shall not include in underwriting profit, when computing the tax prescribed by this section, the amounts refunded by such companies on account of premiums previously paid by their policy-holders.

When the superintendent has computed the tax on a company's underwriting profit, he shall forthwith mail to the last known address of the principal office of such company a statement of the amount so charged against it; which amount the company shall pay to the collector of taxes within thirty days after receipt of such notice from the superintendent, and no further tax, except the taxes on investment income from funds representing reserves, capital stock, and surplus as prescribed by sections 10 and 11 of this Act and the license fee prescribed by section 13, shall be imposed by the District upon such company, or the agents thereof, for the privilege of transacting the business of marine insurance in the District.

SEC. 10. That, in addition to the tax on underwriting profit as prescribed under sections 8 and 9, every insurance company transacting business within the District shall, with respect to marine insurance written by it within the District, be taxed annually at the rate of 5 per centum on its average earnings on reserves for unpaid losses and unexpired premiums. The reserve for unpaid losses and unexpired premiums shall be arrived at by adding the unpaid loss and unexpired premium reserves on marine insurance risks, written within the District, at the beginning and end of the calendar year, and striking an average. Should any company not carry its unpaid loss and unexpired premium reserves separately for the District, then the tax provided under this section shall be applied to such proportion of the company's total unpaid loss and unexpired premium reserves as the net premiums of the company from marine insurance written within the District during the calendar year bear to the total net marine premiums of the company. Average earnings on reserves for unpaid losses and unexpired premiums shall be deemed, for the purpose of taxation under this section, to mean not more than 2 per centum of these reserves.

SEC. 11. That, in addition to the taxes, as prescribed under sections 8 to 10, inclusive, of this Act, every company organized under the laws of the District and transacting marine insurance therein shall, with respect to marine insurance written in the District, pay a tax of 2 per centum on its investment income from funds representing capital stock and surplus as shown by the company's annual statement. Such investment income shall, for purposes of taxation under

this Act, be arrived at as follows: Add the gross assets at the beginning and end of the calendar year and strike an average. Add capital stock and surplus at the beginning and end of the year and strike an average. Ascertain the proportion which the average capital stock and surplus bears to average gross assets. Credit to investment income on capital stock and surplus such proportion of all income, except income taxed under section 10 of this Act, derived from interest, dividends, rents, and profits on sales or redemption of assets. Charge against investment income on capital stock and surplus such proportion of all losses on sales or redemption of assets.

Should a company subject to this tax be writing other classes of insurance, and the capital stock and surplus referred to herein relate to all the classes of insurance written without being specifically allocated to the several classes of insurance written, then such proportion of the investment income from funds representing capital stock and surplus, computed according to the method prescribed in the preceding paragraph of this section, shall be applicable to marine insurance for purposes of taxation under this section as the net premiums from marine insurance during the calendar year bear to the net premiums of the company from all the classes of insurance written.

SEC. 12. That every company writing marine insurance in the District shall set forth in its annual statement to the superintendent, and in the form prescribed by him, all the items necessary to compute the taxes as prescribed under sections 10 and 11. If the superintendent finds the report of such company correct he shall compute the taxes as prescribed and charge the same to such company. Notification to companies by the superintendent of the amount of tax charged to them and the time and place of payment by the companies shall be the same as is required under section 9 relating to taxation of underwriting profit.

SEC. 13. That in lieu of all other license fees every company writing marine insurance in the District shall pay a single annual fee equal to \$100 if the assets of the company aggregate \$1,000,000 or under, to \$150 if the assets aggregate over \$1,000,000 and do not exceed \$5,000,000, and to \$200 if the assets exceed \$5,000,000. The manner and time of paying this single fee and its remittance to the collector of taxes shall be the same as prescribed under section 9 for the payment of taxes on underwriting profit.

SEC. 14. That if a company cease to do a marine insurance business in the District, it shall thereupon make report to the superintendent of the items pertaining to its marine insurance business, as enumerated and described by sections 8 to 13, inclusive, to the date of its ceasing to do business and not theretofore reported, and forthwith pay to the superintendent the taxes and annual license fee thereon, computed according to this Act.

SEC. 15. That if a company refuses to make any report for taxation or license fee purposes, or to pay taxes or license fees imposed upon it as required by this Act, it shall be liable to the United States for the amount thereof and a penalty of not more than \$200 per month for each month it has failed after demand therefor. Service of process in any action to recover such tax or penalty shall be made according to the requirements of the District law relating to actions brought against insurance companies by policyholders thereof.

SEC. 16. That none of the taxes or fees prescribed under sections 8 to 13, inclusive, shall be imposed upon business written within the District by "Syndicate B," a marine insurance syndicate created by agreement between the United States Shipping Board and the United States Shipping Board Emergency Fleet Corporation and a number of subscribing American marine insurance companies, under date of June 28, 1920, for the purpose of insuring all American steel steamships which the United States Shipping Board or United States Shipping Board Emergency Fleet Corporation may hereafter sell to others, to the full extent of the unpaid purchase price thereof, and also such other American steel steamships heretofore sold by said Shipping Board or by said Corporation as are acceptable for insurance to the Syndicate B subscribers.

SEC. 17. Nothing herein shall be construed so as to relieve any corporation organized or doing business under the provisions hereof from the payment of taxes on its income under the revenue laws of the United States.

TITLE VI.—INVESTMENT OF ASSETS OF DOMESTIC COMPANIES

SEC. 18. That the cash capital of every domestic corporation transacting marine insurance in the District, required to have a capital, to the extent of the minimum capital required by this Act, shall be invested and kept invested in—

(1) Stocks or bonds of the United States, or of any State or of the District, or of any county, township, school, or other district or municipality in the United States, or Federal farm loan bonds, not estimated above their par value or their current market value.

(2) Bonds or notes secured by mortgages or deeds of trust of improved unencumbered real estate, or perpetual leases thereof, in the United States, worth not less than 50 per centum more than the amount loaned thereon. Where improvements on land constitute part of the value on which the loan is made, the improvements shall be insured against fire for the benefit of the mortgagee in amount not less than the difference between two-thirds the value of the land and the amount of the loan.

(3) Mortgage bonds of railroad companies in the United States and on which default in payment of interest has not occurred within five years prior to the purchase by the company.

(4) Loans upon the pledge of such securities.

The cash capital of every insurance corporation not organized under the laws of the District and transacting marine insurance in the District to the extent of the minimum capital required of a like domestic corporation shall be invested and kept invested in the same classes of securities specified in the preceding paragraph of this section for domestic insurance corporations, except that like securities of the home State or foreign country shall be recognized as legal investments for the amount of the minimum capital required. The residue of the capital and the surplus money and funds of every domestic insurance corporation over and above its capital, and the deposit that it may be required to make with the superintendent, may be invested in or loaned on the pledge of any of the securities specified in the preceding paragraph of this section; or in the stocks,

bonds, or other evidence of indebtedness of any solvent institution incorporated under the laws of the United States, or of any State thereof, or of the District; or in such real estate as it is authorized by this Act to hold.

The assets of every domestic mutual insurance corporation transacting marine insurance in the District to the extent of an amount equal to the minimum capital required of a like domestic stock corporation shall be invested and kept invested in the same class of securities specified for the investment of the minimum capital of like domestic stock insurance corporations. The residue of the assets of every domestic mutual insurance corporation, over and above said amount, may be invested in or loaned on the pledge of the same classes of securities or property as specified in this chapter for the investment or loan of the residue of the capital and the surplus money and funds of like domestic stock insurance corporations.

A company doing business in a foreign country may invest the funds required to meet its obligations in such country in conformity to the laws thereof in the same kinds of securities in such foreign country as such company is allowed by law to invest in the United States.

Nothing in this Act shall prohibit a company from accepting in good faith, in order to prevent losses and to protect its interests, securities or property, other than herein referred to, in payment of or to secure debts due or to become due the company.

SEC. 19. That a domestic company may acquire, hold, and convey real estate only for the purpose and in the manner following:

(1) The building in which it has its principal office and the land on which it stands.

(2) Such as shall be requisite for branch office or other business facilities necessary for its convenient accommodation in the transaction of its business.

(3) Such as shall have been acquired for the accommodation of its business.

(4) Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for money due.

(5) Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

(6) Such as it shall have purchased at sales on judgments, decrees, or mortgages obtained or made for such debts.

All such real estate specified in subdivisions (3), (4), (5), and (6) of this section which shall not be necessary for its accommodation in the convenient transaction of its business shall be sold by the company and disposed of within five years after it shall have acquired the title to the same, or within five years after the same shall have ceased to be necessary for the accommodation of its business, unless the company procure the certificate of the superintendent that its interests will suffer materially by a forced sale thereof, in which event the time for the sale may be extended to such time as the superintendent shall direct in such certificate.

TITLE VII.—MERGER OF COMPANIES

SEC. 20. That any two or more corporations organized under the laws of the District, and transacting the business of marine insur-

ance, may merge or consolidate into one corporation under the name of any title approved by the superintendent, but no mutual corporation or company shall be merged with a stock corporation or company. The corporations may enter into and make an agreement for such merger or consolidation, prescribing its terms and conditions, the amount of its capital, which shall not be larger in amount than the aggregate amount of capital of the merged or consolidated corporations, and the number of shares into which it is to be divided. Such agreement must be assented to by a vote of the majority of the number of directors of each corporation prescribed in its charter and must be approved by the votes of stockholders owning at least two-thirds of the stock of each corporation represented and voted upon in person or by proxy at a meeting, called separately for that purpose, upon a notice stating the time, place, and object of the meeting served at least thirty days previously upon each personally or mailed to him at his last known post-office address, and also published at least once a week for four weeks successively in some newspaper printed in the District. Every such agreement must have the approval of the superintendent before the details of said agreement may be carried into effect as provided therein.

The new corporation may require the return of the original certificates of stock held by each stockholder in each of the corporations to be merged or consolidated and issue in lieu thereof new certificates for such number of shares of its own stock as such stockholder may be entitled to receive. Upon such merger or consolidation all rights and property of the several companies shall become the property of the corporation composed of such companies, and the new corporation shall succeed to all the obligations and liabilities of the old corporations in the same manner as if they had been incurred or contracted by it. The stockholders of the old corporations shall continue subject to all the liabilities, claims, and demands existing against them at or before such merger or consolidation. No action or proceeding pending at the time of the consolidation, in which any or all of the old corporations may be a party, shall abate or discontinue by reason of the merger or consolidation, but the same may be prosecuted to final judgment in the same manner as if the merger or consolidation had not taken place, or the new corporation may be substituted in place of any corporation so merged or consolidated by order of the court in which the action or proceeding may be pending.

TITLE VIII.—ESTABLISHMENT OF FOREIGN CONNECTIONS

SEC. 21. That any domestic company authorized to write insurance or reinsurance within the District may establish and maintain one or more agencies beyond the United States for the transaction of its lawful business upon such terms and conditions as it may prescribe and may omit from its annual report the transactions by any such agency, if beyond the North American Continent, for six months previous to the time when the report is made, but such omitted transactions shall be included in the next annual report. If such company is required by the foreign nation within which it transacts business to make a deposit in the securities of its own

Government, or otherwise, the excess of such deposit over the local reserve liability, computed according to the terms of this Act, shall be allowed as an asset in the company's home statement. The company shall also be allowed to include in its admitted assets all agents' balances in foreign countries which are collectible and which are not more than one hundred and eighty days past due.

SEC. 22. That corporations engaged exclusively in the writing of insurance in foreign countries may be organized within the District in the same manner and under the same conditions as prescribed by this Act for companies writing risks within the United States. The capital stock of such insurance corporations may be owned by American corporations engaged in the same kind of insurance, and the holding companies shall be given credit for the stock thus owned as admitted assets when rendering their financial statements to the superintendent. Any corporation organized under this section shall pay taxes and fees as provided under Chapter V of this Act and shall comply with and receive the benefit of all other sections of this Act so far as the same may be applicable.

TITLE IX.—PROHIBITION OF UNAUTHORIZED INSURANCE—LICENSING OF BROKERS IN CERTAIN CASES

SEC. 23. That any insurance agent or broker, incorporated or unincorporated, or any other person, partnership, or corporation, who or which, with or without compensation, shall, in or from the District, act for or with, or aid, in any manner, either directly or indirectly, any other person, association, partnership, or corporation in soliciting, procuring, or transacting marine insurance with or from any corporation, partnership, association, Lloyd's, individual underwriters, or reinsurers not authorized by license of the superintendent to transact the business of insurance therein, and whether the subject matter of the insurance or reinsurance is or may be within or without the District, except as in this chapter hereinafter provided, shall be guilty of a misdemeanor and shall forfeit to the District the sum of not less than \$100 nor more than \$1,000 for each offense: *Provided*, That for the purposes of this chapter any office outside of the United States of an insurer organized under the laws of any foreign country, whether said insurer be licensed to do business in the United States or not, shall be deemed and held to be an insurer not authorized to transact the business of insurance in the District.

SEC. 24. That the superintendent, in consideration of the yearly payment of \$100, shall issue to any person or corporation who is trustworthy and is competent to transact a marine insurance business in such manner as to safeguard the interests of the insured and who maintains in this District a regular office for the transaction of an insurance brokerage business a license, revocable for cause by the superintendent, permitting the party named in such license to act within the District as agent for the assured or broker to solicit or negotiate or place contracts of marine insurance with corporations, partnerships, associations, Lloyd's, individual underwriters, and inter-insurers, which are not authorized to transact the business of insurance in this District, and shall renew the same annually, unless revoked for cause: *Provided*, That with respect to insurers organized

under the laws of any foreign country and duly licensed to transact the business of insurance in any State or Territory of the United States and with respect to insurers organized under the laws of any State or Territory of the United States, said license shall not issue unless the superintendent shall be satisfied that said insurers show within the United States the same standards of solvency as would be required if said insurers were licensed at the time of issue of said license to transact the business of marine insurance in the District. Said license shall provide and the licensee thereunder shall agree that it may be revoked by the superintendent in his discretion in the event that said licensee does not comply with the terms and conditions of said license and of this chapter: *Provided*, That if a branch, associate, agent, correspondent, or head office of any broker so licensed by the superintendent, or such broker, shall, outside of this District, do or perform any of the acts or things forbidden to an unlicensed broker in this District the superintendent may, in his discretion, cancel and revoke the license of such licensee: *Provided, however*, That nothing herein contained shall authorize any person or corporation so licensed to act as insurer or guarantee the performance of any agreement, instrument, or policy of insurance or reinsurance as aforesaid or countersign or issue in the District any agreement, policy, or other instrument of such insurance unless such person or corporation so licensed shall have complied with the provisions of this Act.

SEC. 25. That any person or corporation holding such license from the superintendent who shall do or perform any or all of the aforesaid acts in connection with marine insurance with any corporation, person, partnership, association, Lloyd's, individual underwriters, or interinsurers, which are not authorized by license of the superintendent to transact such business in the District, shall (1) maintain in good faith an office in the District, (2) keep in said office a complete book of record of the marine insurance transacted by, through, or with his or its assistance with unauthorized insurers, showing (a) a brief description or identification of the subject matter and kind of the insurance, (b) the voyage insured, or, if for time, the date of such insurance going into effect and the date of its termination, (c) the name of the beneficial insured, (d) the amount insured with unauthorized insurers, (e) the rate of premium, (f) the gross premium payable therefor. Such book of record shall also contain statements in the same details of all such insurances canceled or on which premiums have been increased or reduced (including laying-up returns) and the amounts of additional or of return premiums thereon; (3) keep in said office such additional record of the insurance, including the names of the corporations, partnerships, associations, persons, Lloyd's, underwriters, or interinsurers and the amount insured by each. The books of record and all supplementing records shall be open at all times to the inspection of and examination by the superintendent of insurance or anyone appointed by him for said purpose. The data as herein outlined shall be furnished to the superintendent within one month following his request therefor and upon the form furnished by him. Such classified records of any licensee reporting shall be regarded by the superintendent as intended solely for the information of the District and Federal Governments and shall not be revealed to any person not authorized

by law to receive the same. Any person or persons in position to acquire the aforesaid information who shall, either while in office or after leaving office, reveal such information to any person or corporation not legally authorized to receive the same shall be guilty of a misdemeanor and subject, upon conviction, to a fine of \$2,000 or imprisonment for one year, or to both such fine and imprisonment. Any licensee under this chapter failing to report such classified records within the time limit prescribed by this section shall forfeit to the District \$200 per month for each month he has failed.

SEC. 26. That each person or corporation to whom such a license as broker shall be issued shall, before transacting business thereunder, execute and deliver to the superintendent a bond in the penal sum of not less than \$5,000, with such surety or sureties as the superintendent shall require and approve, conditioned that the said broker will faithfully comply with all the requirements of this chapter.

TITLE X.—KEEPING OF CLASSIFIED RECORDS

SEC. 27. That every insurance company organized or admitted to write marine insurance within the District shall keep a classified record of all its marine insurance transactions in the United States, setting forth for each calendar year the volume of risks and the premiums involved with respect to (1) hull and time freight insurance; (2) cargo and voyage freight insurance and other voyage interests; (3) builders' risk insurance; (4) reinsurance ceded to American companies; (5) reinsurance ceded to American branch offices of alien admitted companies; (6) reinsurance ceded to any foreign office of alien admitted companies and reinsurance ceded to nonadmitted alien insurers; (7) reinsurance received from American companies; (8) reinsurance received from any foreign office of admitted alien companies and reinsurance received from alien non-admitted insurers. The data as herein outlined shall be furnished to the superintendent within two months following his request therefor and upon the form furnished by him. Such classified records of any individual company reporting shall be regarded by the superintendent as intended solely for the information of the District and Federal Governments, and shall not be revealed to any person not authorized by law to receive the same. Any person or persons in position to acquire the aforesaid information who shall, either while in office or after leaving office, reveal such information to a competitor shall be guilty of a misdemeanor and subject upon conviction to a fine of \$2,000, or imprisonment for one year, or to both such fine and imprisonment. Any company or admitted branch office failing to report such classified records within the time limit prescribed by this section shall forfeit to the District \$200 per month for each month it has failed.

TITLE XI.—PENALTIES

SEC. 28. That any person, corporation, association, or partnership who violates any of the provisions of this Act, or fails to comply with any duty imposed upon him or it by any provision of this Act,

for which violation or failure no penalty is elsewhere provided by this Act or by the laws of the District, shall upon conviction thereof be fined not exceeding \$500.

SEC. 29. That no person shall be excused from attending and testifying or producing any books, papers, or other documents before any court or magistrate upon any investigation, proceeding, or trial for a violation of any of the provisions of this Act upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced by him shall be used against him upon any criminal investigation, proceeding, or trial.

TITLE XII.—CLERICAL ASSISTANCE AND DEPARTMENTAL EXPENSES

SEC. 30. For the purpose of carrying out the provisions of this Act the superintendent of insurance is authorized to appoint, in addition to the present force, an examiner at \$3,000 per annum, a clerk-stenographer at \$1,800 per annum, and to increase the contingent expenses of the Insurance Department in the sum of \$800.

TITLE XIII.—UNCONSTITUTIONALITY OF PART OF ACT NOT TO AFFECT THE REMAINDER

SEC. 31. That this Act shall supersede the provisions of any other law of the District in conflict therewith. Should any section or provision of this Act be held unconstitutional or invalid, the constitutionality or validity of the Act as a whole or of any part thereof, other than the part so held unconstitutional or invalid, shall not be affected.

SEC. 32. That the right to alter, amend, or repeal this Act is hereby reserved.

Approved, March 4, 1922 (42 St. L. 401 et seq.).

LOANING OF MONEY

An Act To regulate the business of loaning money on security of any kind by persons, firms, and corporations other than national banks, licensed bankers, trust companies, savings banks, building and loan associations, and real-estate brokers in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter it shall be unlawful and illegal to engage in the District of Columbia in the business of loaning money upon which a rate of interest greater than six per centum per annum is charged on any security of any kind, direct or collateral, tangible or intangible, without procuring license; and all persons, firms, voluntary associations, joint-stock companies, incorporated societies, and corporations engaged in said business shall pay a license tax of five hundred dollars per an-

num to the District of Columbia. No license shall be granted to any person, firm, or voluntary association unless such person and the members of any such firm or voluntary association shall be bona fide residents of the District of Columbia, and no license shall be granted for a period longer than one year, and no license shall be granted to any joint-stock company, incorporated society, or corporation unless and until such company, society, or corporation shall, in writing and in due form, to be first approved by and filed with the Commissioners of the District of Columbia, appoint an agent, resident in the District of Columbia, upon whom all judicial and other process or legal notice directed to such company, society, or corporation may be served. And in the case of death, removal from the District, or any legal disability or disqualification of any such agent, service of such process or notice may be made upon the assessor of the District of Columbia.

SEC. 2. That applications for license to conduct such business must be made in writing to the Commissioners of the District of Columbia, and shall contain the full names and addresses of applicants, if natural persons, and in the case of firms and voluntary associations, the full names and addresses of all the members thereof, and in the case of joint-stock companies, incorporated societies, and corporations, the full names and addresses of the officers and directors thereof and under what law or laws organized or incorporated, and the place where such business is to be conducted, and such other information as the said commissioners may require. Every license granted shall date from the first of the month in which it is issued and expire on the thirty-first day of the following October, and such license shall be kept conspicuously displayed in the place of business of the licensee. Every application shall be filed not less than thirty days prior to the granting of such license, and notice of the filing of such application shall be posted in the office of the assessor of the said District and be published twice a week for three successive weeks in a daily newspaper published in the District of Columbia. Protest may be made by any person to the issuing of such license, and when such protests are filed with the said commissioners the latter shall give public notice of and hold a public hearing upon such protests before issuing such license. The said commissioners shall have the power to reject any application for license after a hearing upon such protest or for failure on the part of the applicant to observe this Act, or when such applicant shall have violated its provisions.

SEC. 3. That each application shall be accompanied by a bond to the District of Columbia in the penal sum of five thousand dollars, with two or more sufficient sureties, and conditioned that the obligor will not violate any law relating to such business. The execution of any such bond by a fidelity or surety company authorized by the laws of the United States to transact business therein shall be equivalent to the execution thereof by two sureties, and such company, if excepted to, shall justify in the manner required by law of fidelity and surety companies. If any person shall be aggrieved by the misconduct of any such licensed person, firm, voluntary association, joint-stock company, incorporated society, or corporation, or by his, their, or its violation of any law relating to such business,

and shall recover a judgment therefor, such person or his personal representative or heirs or distributees may, after a return unsatisfied either in whole or in part of any execution issued upon such judgment, maintain an action in his own name upon such bond herein required in any court having jurisdiction of the amount claimed. The Commissioners of the District of Columbia shall furnish to anyone applying therefor a certified copy of any such bond filed with them, upon the payment of a fee of twenty-five cents, and such certified copy shall be prima facie evidence in any court that such bond was duly executed and delivered by the person, firm, voluntary association, joint-stock company, incorporated society, or corporation whose names appear thereon. Said bond shall be renewed and refiled annually in October of each year, or the licensed person, firm, voluntary association, joint-stock company, incorporated society, or corporation shall within thirty days thereafter, cease doing business, and their license shall be revoked by the said commissioners, but said bond until renewed and refiled as aforesaid shall be and remain in full force and effect.

SEC. 4. That every person, firm, voluntary association, joint-stock company, incorporated society, or corporation conducting such business shall keep a register, approved by said commissioners, showing in English, the amount of money loaned, the date when loaned and when due, the person to whom loaned, the property or thing named as security for the loan, where the same is located and in whose possession, the amount of interest, all fees, commissions, charges, and renewals charged, under whatever name. Such register shall be open for inspection to the said commissioners, their officers and agents, on every day, except Sundays and legal holidays, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon. Every such person, firm, voluntary association, joint-stock company, incorporated society, or corporation conducting such business shall, on or before the twentieth day of January of each year, make to the said commissioners an annual statement in the form of a trial balance of its books on the thirty-first day of December in each year, specifying the different kinds of its liabilities and the different kinds of its assets, stating the amount of each, together with such other information as may be called for.

SEC. 5. That no such person, firm, voluntary association, joint-stock company, incorporated society, or corporation shall charge or receive a greater rate of interest upon any loan made by him or it than one per centum per month on the actual amount of the loan, and this charge shall cover all fees, expenses, demands, and services of every character, including notarial and recording fees and charges, except upon the foreclosure of the security. The foregoing interest shall not be deducted from the principal of loan when same is made. Every such person, firm, voluntary association, joint-stock company, incorporated society, or corporation conducting such business shall furnish the borrower a written, typewritten, or printed statement at the time the loan is made, showing, in English, in clear and distinct terms, the amount of the loan, the date when loaned and when due, the person to whom the loan is made, the name of the lender, the amount of interest charged, and the lender shall give the borrower a plain and complete receipt for all payments made on account of

the loan at the time such payments are made. No such loan greater than two hundred dollars shall be made to any one person: *Provided*, That any person contracting, directly or indirectly, for, or receiving a greater rate of interest than that fixed in this Act, shall forfeit all interest so contracted for or received; and in addition thereto shall forfeit to the borrower a sum of money, to be deducted from the amount due for principal, equal to one-fourth of the principal sum: *And provided further*, That any person in the employ of the Government who shall loan money in violation of the provisions of this Act shall forfeit his office or position, and be removed from the same.

SEC. 6. That complaints against any licensee or applicant for a license shall be made in writing to the said commissioners, and notice thereof of not less than three days shall be given to said licensee or applicant by serving upon him a concise statement of the facts constituting the complaint, and a hearing shall be had before the said commissioners within ten days from the date of the filing of the complaint, and no adjournment shall be taken for longer than one week. A daily calendar shall be kept of all hearings by the said commissioners, which shall be posted in a conspicuous place in their public office for at least three days before the date of such hearings. The said commissioners shall render their decision within eight days from the time the matter is finally submitted to them. Said commissioners shall keep a record of all such complaints and hearings, and may refuse to issue and shall suspend or revoke any license for any good cause shown, within the meaning and purpose of this Act; and when it is shown to their satisfaction, whether as a result of a written complaint as aforesaid or otherwise, that any licensee or applicant under this Act, either before or after conviction, is guilty of any conduct in violation of this or any law relating to such business it shall be the duty of the said commissioners to suspend or revoke the license of such licensee or reject the petition of the applicant, but notice of the written complaint or proposed action shall be presented to and reasonable opportunity shall be given said licensee or applicant to be heard in his defense. Whenever for any cause such license is revoked, said commissioners shall not issue another license to said licensee until the expiration of at least one year from the date of revocation of such license, and not at all if such licensee shall have been convicted of a violation of this Act under the provisions of the following section thereof.

SEC. 7. That any violation of this Act shall be punished by a fine of not less than twenty-five dollars and not greater than two hundred dollars, or by imprisonment in the jail or the workhouse of the District of Columbia for not less than five nor more than thirty days, or by both such fine and imprisonment, in the discretion of the court. The said commissioners shall cause the corporation counsel to institute criminal proceedings for the enforcement of this Act before any court of competent jurisdiction.

SEC. 8. That in any foreclosure on any loan made under this Act no charges for attorneys' or agents' fees shall be made or collected which will exceed ten per centum of the amount found due in such foreclosure proceedings.

SEC. 9. That in any contract made in pursuance of the provisions of this Act it shall be unlawful to incorporate any provision for

liquidated or other damages as a penalty for any default or forfeiture thereunder.

SEC. 10. That nothing contained in this Act shall be held to apply to the legitimate business of national banks, licensed bankers, trust companies, savings banks, building and loan associations, or real estate brokers, as defined in the Act of Congress of July first, nineteen hundred and two. (32 St. L. p. 621.)

SEC. 11. That the enforcement of this Act shall be intrusted to the Commissioners of the District of Columbia, and they are hereby authorized and empowered to make all rules and regulations necessary in their judgment for the conduct of such business and the enforcement of this Act in addition hereto and not inconsistent herewith.

SEC. 12. That all Acts and parts of Acts inconsistent herewith are hereby repealed.

SEC. 13. That this Act shall take effect at the expiration of thirty days from and after the date of its passage.

Approved, February 4, 1913 (37 St. L. 657).

PUBLIC UTILITIES

[Extract from an act (Public No. 435) making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1914, and for other purposes, approved March 4, 1913 (37 St. L., pt. 1, p. 974) section 8 of which creates a public utilities commission]

SEC. 8. Par. I. That for the purpose of this section the term "commission" when used herein shall mean the public utilities commission of the District of Columbia created by this section.

The term "commissioner" when used in this section shall mean one of the members of such commission.

The term "public utility" as used in this section shall mean and embrace every street railroad, street railroad corporation, common carrier, gas plant, gas corporation, electric plant, electrical corporation, water power company, telephone corporation, telephone line, telegraph corporation, telegraph line, and pipe line company.

The term "service" is used in this section in its broadest and most inclusive sense.

The term "corporation" when used in this section includes a corporation, company, association, and joint-stock company or association.

The word "person" when used in this section includes an individual and a firm or co-partnership.

The term "joint rates" when used in this section with reference to street railways shall be taken to mean rates between unrelated lines now in effect under existing law or under contract, or which may hereafter be specifically authorized by law.

The term "extension or extensions" when used in this section shall include the reasonable extension of the service and facilities of every street railroad, street railroad corporation, gas plant, gas corporation, electric plant, electrical corporation, telephone corporation, telephone line, telegraph line, and telegraph corporation as the same are defined in this section.

The term "street railroad" when used in this section includes every such railroad, whether wholly or partly in the District of Columbia, by whatsoever power operated, or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons or property for compensation, and includes all equipment, construction, maintenance, repairs, switches, spurs, tracks, terminals, terminal facilities of every kind, trackage, joint or reciprocal trackage, transfers of passengers between street railways having connecting lines and street railways having independent lines, subways, tunnels, and stations, used, operated, or owned by or in connection with any such street railroad, and all the property of the same used in the conduct of its business.

The terms "street railroad corporation" when used in this section includes every corporation, company, association, joint-stock company or association, partnership, and person doing business in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any street railroad or any cars or other equipment used thereon or in connection therewith.

The term "common carrier" when used in this section includes express companies and every corporation, street railroad corporation, company, association, joint-stock company or association, partnership, and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any agency or agencies for public use for the conveyance of persons or property within the District of Columbia for hire. Steam railroads, the Washington Terminal Company, and the Norfolk and Washington Steamboat Company, and all companies engaged in interstate traffic upon the Potomac River and Chesapeake Bay are excluded from the operation of this section, and are not included in the term "common carrier."

The term "gas plant" when used in this section includes all buildings, easements, real estate, mains, pipes conduits, service pipes, services, pipe galleries, meters, boilers, water-gas sets, retorts, fixtures, condensers, scrubbers, purifiers, holders, materials, apparatus, personal property, and franchises, and property of every kind used in the conduct of the business operated, owned, controlled, used or to be used for or in connection with or to facilitate the manufacture, distribution, sale, or furnishing of gas (natural or manufactured) for light, heat, or power.

The term "gas corporation" when used in this section includes every corporation, company, association, joint-stock company or association, partnership, or person manufacturing, making, distributing, or selling gas for light, heat, or power, or for any public use whatsoever in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, and in said district owning, operating, controlling, or managing any gas plant, except where the gas is made or produced and distributed by the maker on or through private property solely for its own use or the use of its tenants and not for sale to or for the use of others.

The term "electric plant" when used in this section includes all engines, boilers, dynamos, generators, storage batteries, converters, motors, transformers, cables, wires, poles, lamps, meters easements,

real estate, fixtures, and personal property, materials, apparatus, and devices of every kind operated, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale, or furnishing of electricity for light, heat, or power, and any conduits, ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying electrical conductors used or to be used wholly or in part for the transmission of electricity for light, heat, or power, except where electricity is made, generated, produced, or transmitted by a private person or private corporation on or through private property solely for its own use or the use of tenants of its building and not for sale to or for the use of others.

The term "electrical corporation" when used in this section includes every corporation, company, association, joint-stock company or association, partnership, or person doing business in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any electric plant, including any water plant, or water property, or water falls, or dam, or water-power stations, except where electricity is made, generated, produced, or transmitted by a private person or private corporation on or through private property solely for its own use or the use of tenants of its building and not for sale to or for the use of others.

The term "water-power company" when used in this section includes every corporation, company, association, joint-stock company or association, partnership, and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, managing, or controlling any plant or property, dam or water supply, canal, or power station for the development of water power for the generation of electrical current or other power or for the distribution or sale of such electrical current or other power.

The term "telephone corporation" when used in this section includes every corporation, company, association, joint-stock company or association, partnership, and persons, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any plant, wires, poles for the reception, transmission, or communication of messages by telephone, telephonic apparatus or instruments, or any telephone line or part of telephone line, used in the conduct of the business of affording telephonic communication for hire, or which licenses, lets, or permits telephonic communication for hire.

The term "telephone line" when used in this section includes conduits, ducts, poles, wires, cables, cross arms, receivers, transmitters, instruments, machines, and appliances, and all devices, real estate, franchises, easements, apparatus, fixtures, property, appurtenances, and routes used, operated, controlled, or owned by any telephone corporation to facilitate the business of affording telephonic communication for hire, or which licenses, lets, or permits telephonic communication.

The term "telegraph corporation" when used in this section includes every corporation, company, association, joint-stock company or association, partnership, and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any plant, wires, poles, or property for the

purposes of communication, or of transmitting or receiving messages by telegraph, or by any telegraphic apparatus or instrument, or any telegraph line or part of telegraph line used in the conduct of the business of affording for hire, communication by telegraph, or which licenses, lets, or permits telegraphic communication for hire.

The term "telegraph line" when used in this section includes conduits, ducts, poles, wires, cables, cross arms, instruments, machinery, appliances, and all devices, real estate, franchises, easements, apparatus, fixtures, property, and routes used, operated, controlled, or owned by any telegraph corporation to facilitate the business of affording communication by telegraph for hire.

The term "pipe-line company" when used in this section includes every corporation, company, association, joint-stock company or association, partnership, or person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, managing, or controlling the supply of any liquid, steam, or air through pipes or tubing to consumers for use or for lighting, heating, or cooling purposes, or for power.

This section shall apply to the transportation of passengers, freight, or property from one point to another within the District of Columbia, and any common carrier performing such service; and this section shall be so applicable and be so construed as to be free from conflict with those provisions of the Constitution of the United States and the laws in pursuance thereof relating to interstate commerce.

Corporations formed to acquire property or to transact business which would be subject to the provisions of this section, and corporations possessing franchises for any of the purposes contemplated by this section shall be deemed to be subject to the provisions of this section, although no property may have been acquired, business transacted, or franchises exercised.

Par. 2. That every public utility doing business within the District of Columbia is required to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable. The charge made by any such public utility for any facility or services furnished, or rendered, or to be furnished or rendered, shall be reasonable, just, and nondiscriminatory. Every unjust or unreasonable or discriminatory charge for such facility or service is prohibited and is hereby declared unlawful. Every public utility is hereby required to obey the lawful orders of the commission created by this section.

Par. 3. That every utility doing business in the District of Columbia having tracks, conduits, subways, poles, wires, switchboards, exchanges, works, or other equipment shall, for a reasonable compensation, permit the use of the same by any other public utility whenever public convenience and necessity require such use, and such use will not result in irreparable injury to the owners or other users of such equipment; nor in any substantial detriment to the service to be rendered by such owners or other users. In case of failure to agree upon such use, or the conditions or compensation for such use, any public utility or any person, firm, co-partnership, association, or corporation interested may apply to the commission, and if after investigation the commission shall ascertain that public

convenience and necessity require such use and that it would not result in irreparable injury to the owners or other users of such equipment not in any substantial detriment to the service to be rendered by such owners or other users of such equipment, it shall by order direct that such use be permitted and prescribe the conditions and compensation for such joint use. Such use so ordered shall be permitted and such conditions and compensation so prescribed shall be the lawful conditions and compensation to be observed, followed, and paid, subject to recourse to the courts upon the complaint of any interested party, as hereinafter provided, which provisions, so far as applicable, shall apply to any action arising on such complaint so made. Any such order of the commission may be from time to time revised by the commission upon application of any interested party or upon its own motion after hearing and notice by order in writing.

Par. 4. That the commission shall have power, after hearing and notice by order in writing, to require and compel every public utility to comply with the provisions of this section, and with all other laws of the United States applicable, and any municipal ordinance or regulation relating to said public utility, and to conform to the duties upon it thereby imposed or by the provisions of its own charter, if any charter has or shall be granted it: *Provided*, That nothing herein contained shall be held to relieve any public utility, its officers, agents, or servants, from any punishment, fine, forfeiture, or penalty for violation of any such law, ordinance, regulation, or duty imposed by its charter, nor to limit, take away, or restrict the jurisdiction of any court or other authority which now has or which may hereafter have power to impose any such punishment, fine, forfeiture, or penalty.

Par. 5. That whenever any public utility or person shall propose any change in any law relating directly or indirectly to the property or operations of any public utility the said proposed change shall also and at the same time be submitted to the commission, which may take testimony and give a public hearing thereon, and the commission shall recommend such bills as will in its judgment protect the interests of the public and such public utility and transmit the same to the proper committees of the Senate and House of Representatives.

Par. 6. That the commission shall ascertain, as soon and as nearly as practicable, the amount of money expended in the construction and equipment of every public utility, including the amount of money expended to procure any right of way; also the amount of money it would require to secure the right of way, reconstruct any road-bed, track, depots, cars, conduits, subways, poles, wires, switchboards, exchanges, offices, works, storage plants, power plants, machinery, and any other property or instrument not included in the foregoing enumeration used in or useful to the business of such public utility, and to replace all the physical properties belonging to the public utility. It shall ascertain the outstanding stock, bonds, debentures, and indebtedness, and the amount, respectively, thereof, the date when issued, to whom issued, to whom sold, the price paid in cash, property, or labor therefor, what disposition was made of the proceeds, by whom the indebtedness is held, so far as ascertain-

able, the amount purporting to be due thereon, the floating indebtedness of the public utility, the credits due the public utility, other property on hand belonging to it, the judicial or other sales of said public utility, its property or franchises, and the amounts purporting to have been paid, and in what manner paid therefor, and the taxes paid thereon. The commission shall also ascertain in detail the gross and net income of the public utility from all sources, the amounts paid for salaries to officers and the wages paid to its employees, and the maximum hours of continuous service required of each class. Whenever the information required by this paragraph is obtained it shall be printed in the annual report of the commission. In making such investigation the commission may avail itself of any information in possession of any department of the Government of the United States or of the Commissioners of the District of Columbia.

Par. 7. That the commission shall value the property of every public utility within the District of Columbia actually used and useful for the convenience of the public at the fair value thereof at the time of said valuation.

Par. 8. That before final determination of such value the commission shall, after notice of not less than thirty days to the public utility, hold a public hearing as to such valuation in the manner hereinafter provided for a hearing, which provisions, so far as applicable, shall apply to such hearing. The commission shall, within ten days after such valuation is determined, serve a statement thereof upon the public utility interested, and shall file a like statement with the District Committees in Congress.

Par. 9. That the commission may at any time, on its own initiative, make a revaluation of the property of any public utility.

Par. 10. That every public utility shall keep and render to the commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted. Every public utility engaged directly or indirectly in any other business than that of the conduct of a street railway, or the production, transmission, or furnishing of heat, light, water, or power, or the conveyance of telegraph or telephone messages, shall, if required by the commission, keep and render separately to the commission in like manner and form the accounts of all such other business, in which case all the provisions of this section shall apply with like force and effect to the books, accounts, papers, and records of such other business.

Par. 11. That the commission shall prescribe the forms of all books, accounts, papers, and records required to be kept, and every public utility is required to keep and render its books, accounts, papers, and records accurately and faithfully in the manner and form prescribed by the commission, and to comply with all directions of the commission relating to such books, accounts, papers, and records. In so far as practicable for the purposes of this section, the form prescribed shall be the form accepted by the Interstate Commerce Commission.

Par. 12. That the commission shall cause to be prepared suitable blanks for carrying out the purposes of this section, and shall when necessary furnish such blanks to each public utility.

Par. 13. That each public utility shall have an office within the District of Columbia in which it shall keep all such books, accounts, papers, and records as shall be required by the commission to be kept within the District of Columbia. No books, accounts, papers, or records required by the commission to be kept within the District of Columbia shall be at any time removed from the District of Columbia, except upon such condition as may be prescribed by the commission: *Provided*, That public utilities operating in the District of Columbia and elsewhere who have their general or executive offices outside of the District, may continue to keep their books, accounts, records, and so forth, at their executive or general offices, such public utilities being required, however, to produce before the commission such books, accounts, records, and papers from time to time as the commission may order.

Par. 14. That the accounts shall be closed annually on the thirty-first day of December, and a balance sheet of that date promptly taken therefrom. On or before the first day of February following such balance sheet, together with such other information as the commission shall prescribe, verified by an owner or officer of the public utility, shall be filed with the commission, and a copy thereof transmitted to Congress.

Par. 15. That the commission shall provide for the examination and audit of all accounts, and all items shall be allocated to the accounts in the manner prescribed by the commission. The agents, accountants, or examiners employed by the commission shall have authority, under the direction of the commission, to inspect and examine any and all books, accounts, papers, records, and memoranda kept by such public utility.

Par. 16. That every public utility shall carry a proper and adequate depreciation account. The commission shall ascertain and determine what are the proper and adequate rates of depreciation of the several classes of property of each public utility. These rates shall be such as will provide the amounts required over and above the expense of maintenance to keep such property in a state of efficiency corresponding to the progress of the industry. Each public utility shall conform its depreciation accounts to such rates so ascertained and determined by the commission. The commission may make changes in such rates of depreciation from time to time as it may find to be necessary. The commission shall also prescribe rules, regulations, and forms of accounts regarding such depreciation which the public utility is required to carry into effect. The commission shall provide for such depreciation in fixing the rates, tolls, and charges to be paid by the public. All moneys in this fund may be expended in keeping the property of such public utility in repair and good and serviceable condition for the use to which it is devoted, or invested, and, if invested, the income from the investments shall also be carried in the depreciation fund. This fund and the proceeds thereof shall be used for no other purpose than as provided in this paragraph, unless with the consent and by order of the commission.

Par. 17. That the commission shall keep itself informed of all new construction, extensions, and additions to the property of all public utilities, and shall prescribe the necessary forms, regulations,

and instructions to the officers and employees of all public utilities for the keeping of construction accounts, which shall clearly distinguish all operating expenses and new construction.

Par. 18. That nothing in this section shall be taken to prohibit a public utility, with the consent of the commission, from providing a sliding scale of rates and dividends according to what is commonly known as the Boston sliding scale, or other financial device that may be practicable and advantageous to the parties interested. No such arrangement or device shall be lawful until it shall be found by the commission, after investigation, to be reasonable and just and not inconsistent with the purposes of this section. Such arrangement shall be under the supervision and regulation of the commission. The commission shall ascertain, determine, and order such rates, charges, and regulations, and the duration thereof, as may be necessary to give effect to such arrangement, but the right and power to make such other and further changes in rates, charges, and regulations as the commission may ascertain and determine to be necessary and reasonable, and the right to alter or amend all orders relative thereto, is reserved and vested in the commission notwithstanding any such arrangement and mutual agreement.

Par. 19. That each public utility shall furnish to the commission in such form and at such times as the commission shall require, such accounts, reports, and information as shall show in itemized detail: Depreciation; salaries and wages; legal expenses; taxes and rentals; quantity and value of material used; receipts from residuals, by-products, services, or other sales; total and net costs; net and gross profits; dividends and interest; surplus or reserve; prices paid by consumers; and in addition such other items, whether of a nature similar to those hereinbefore enumerated or otherwise, as the commission may prescribe, in order to show completely and in detail the entire operation of the public utility in furnishing its product or service to the public.

Par. 20. That the commission shall publish annual reports showing its proceedings relating to all the public utilities of each kind in the District of Columbia, and such other occasional reports as it may deem advisable. The commission shall also publish in its annual reports the value of all property actually used and useful for the convenience of the public, of every public utility as to whose rates, charges, service, or regulations any hearing has been held by the commission or the value of whose property has been ascertained by it under the provisions of this section.

Par. 21. That the commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage, or other condition pertaining to the supply of the product or service rendered by any public utility, and prescribe reasonable regulations for examining and testing such product or service and for the measurement thereof. It shall establish reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters and appliances for measurements, and every public utility is required to carry into effect all orders issued by the commission relative thereto.

Par. 22. That the commission shall provide for the examination and testing of any and all appliances used for the measuring of

any product or service of a public utility. Any consumer or user may have any such appliance tested upon payment of the fees fixed by the commission. The commission shall declare and establish reasonable fees to be paid for testing such appliances on the request of the consumers or users, the fee to be paid by the consumer or user at the time of his request, but to be paid by the public utility and repaid to the consumer or user if the appliance be found defective or incorrect to the disadvantage of the consumer or user.

Par. 23. That the commission may purchase such materials, apparatus, and standard measuring instruments for such examination and tests as it may deem necessary. The commission, its agents, experts, or examiners, shall have power to enter upon any premises occupied by any public utility for the purpose of making the examinations and tests provided for in this section, and to set up and use on such premises any apparatus and appliances and occupy reasonable space therefor.

Par. 24. That every public utility shall file with the commission, within a time to be fixed by the commission, schedules, which shall be open to public inspection, showing all rates, tolls, and charges which it has established and which are in force at the time for any service performed by it within the District of Columbia, or for any service in connection therewith or performed by any public utility controlled or operated by it. The rates, tolls, and charges shown on such schedules shall not exceed the rates, tolls, and charges now allowed by law, and shall be the lawful rates, tolls, and charges within the District of Columbia, and shall remain and be in force until set aside by the commission.

Par. 25. That every public utility shall file with and as a part of such schedule all rules and regulations that in any manner affect the rates charged or to be charged for any service.

Par. 26. That a copy of so much of said schedules as the commission shall deem necessary for the use of the public shall be printed in plain type and kept on file in every station and office of such public utility where payments are made by the consumers or users, open to the public, in such form and place as to be readily accessible to the public and so as to be conveniently inspected.

Par. 27. That where a schedule of joint rates or charges is, or may be, in force between two or more public utilities, such schedule shall in like manner be printed and filed with the commission, and so much thereof as the commission shall deem necessary for the use of the public shall be filed in every such station or office, as provided in the preceding paragraph.

Par. 28. That no change shall thereafter be made in any schedule, including schedules of joint rates, except upon ten days' notice to the commission, and all such changes shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof ten days prior to the time the same are to take effect: *Provided*, That the commission, upon application of any public utility, may prescribe a less time within which a reduction may be made.

Par. 29. That copies of all new schedules shall be filed, as hereinbefore provided, in every station and office of such public utility where payments are made by consumers or users ten days prior to the time the same are to take effect, unless the commission shall prescribe a less time.

Par. 30. That it shall be unlawful for any public utility to charge, demand, collect, or receive a greater or less compensation for any service performed by it within the District of Columbia, or for any service in connection therewith, than is specified in such printed schedules, including schedules of joint rates, as may at the time be in force, or to demand, collect, or receive any rate, toll, or charge not specified in such schedules. The rates, tolls, and charges named therein shall be the lawful rates, tolls, and charges until the same are changed as provided in this section.

Par. 31. That the commission may prescribe such changes in the form in which the schedules are issued by any public utility as may be found to be expedient.

Par. 32. That the commission shall have power to adopt reasonable and proper rules and regulations relative to all inspections, tests, audits, and investigations, and to adopt and publish reasonable and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it.

Par. 33. That the commission shall keep itself informed as to the manner and method in which the business of all public utilities is conducted, and shall have the right to obtain from any public utility all necessary information to enable the commission to perform its duties.

Par. 34. That the commission or any commissioner or any person or persons employed by the commission for that purpose shall, upon demand, have the right to inspect the books, accounts, papers, records, and memoranda of any public utility, and to examine, under oath, any officer, agent, or employee of such public utility in relation to its business and affairs. Any person other than one of said commissioners who shall make such demand shall produce his authority to make such inspection or examination.

Par. 35. That the commission may require, by order or subpoena, to be served upon any public utility in the same manner that a summons is served in a civil action in the Supreme Court of the District of Columbia, the production within the District of Columbia at such time and place as it may designate of any books, accounts, papers, or records kept by such public utility in any office or place without the District of Columbia, or verified copies in lieu thereof, if the commission shall so order, in order that an examination thereof may be made by the commission under its direction. Any public utility failing or refusing to comply with any order or subpoena shall for each day it shall so fail or refuse forfeit and pay to the District of Columbia the sum of one hundred dollars, to be recovered in an action to be brought in the name of said District.

Attendance of witnesses and the production of such documentary evidence may be required from any place in the United States. And in case of disobedience to a subpoena the commission, or any party to a proceeding before the commission may invoke the aid of any court of the United States or the Supreme Court of the District of Columbia in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section. And the said commission is hereby given power to call on any district attorney of the United States,

the corporation counsel of the District of Columbia or any counsel of the commission to enforce the provisions of this section in the proper courts of the United States, and on such call it shall be the duty of the said district attorney, corporation counsel, or any counsel of the commission, upon request of said commission, to enforce the provisions of this paragraph, the cost and expenses incurred to be paid out of the appropriations for the expenses of the courts of the United States.

Par. 36. That for the purpose of making any investigation with regard to any public utility the commission shall have power to appoint, by an order in writing, an agent, whose duties shall be prescribed in such order. In the discharge of his duties such agent shall have every power whatsoever of an inquisitorial nature granted in this section to the commission and shall have power to administer oaths and take depositions. The commission may conduct any number of such investigations contemporaneously through different agents, and may delegate to such agent or agents the taking of all testimony bearing upon any investigation or hearing. The decision of the commission shall be based upon its examination of all testimony and records. The recommendations made by such agents shall be advisory only, and shall not preclude the taking of further testimony, if the commission so order, nor further investigation.

Par. 37. That every public utility shall furnish to the commission all information required by it to carry into effect the provisions of this section, and shall make specific answers to all specific questions submitted by the commission. Any public utility receiving from the commission any blanks with directions to fill the same shall cause the same to be properly filled out so as to answer, fully and correctly, each question therein propounded, and in case it is unable to answer any question it shall give a good and sufficient reason for such failure; and said answer shall be verified under oath by the president, secretary, superintendent, or general manager of such public utility, and returned to the commission at its office within the period fixed by the commission. Whenever required by the commission, every public utility shall deliver to the commission any or all maps, profiles, contracts, reports of engineers, and all documents, books, accounts, papers, and records, or copies of any or all of the same, with a complete inventory of all its property, in such form as the commission may direct.

Par. 38. That upon its own initiative or upon reasonable complaint made against any public utility that any of the rates, tolls, charges, or schedules, or services, or time and conditions of payment, or any joint rate or rates, schedules, or services, are in any respect unreasonable or unjustly discriminatory, or that any time schedule, regulation, or act whatsoever affecting or relating to the conduct of any street railway or common carrier, or the production, transmission, delivery, or furnishing of heat, light, water, or power, or any service in connection therewith, or the conveyance of any telegraph or telephone message, or any service in connection therewith, is in any respect unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission may, in its discretion, proceed, with or without notice, to make such investigation as it may deem necessary or con-

venient. But no order affecting said rates, tolls, charges, schedules, regulations, or act complained of shall be entered by the commission without a formal hearing.

Par. 39. That the commission shall prior to such formal hearing notify the public utility complained of that a complaint has been made, and ten days after such notice has been given the commission may proceed to set a time and place for a hearing and an investigation as hereinafter provided.

Par. 40. That the commission shall give the public utility and the complainant, if any, ten days' notice of the time and place when and where such hearing and investigation will be held and such matters considered and determined. Both the public utility and complainant shall be entitled to be heard and shall have process to enforce the attendance of witnesses.

Par. 41. That if upon such investigation the rates, tolls, charges, schedules, or joint rates shall be found to be unjust, unreasonable, insufficient, or unjustly discriminatory, or to be preferential or otherwise in violation of any of the provisions of this section, the commission shall have power to determine and by order fix and order to be substituted therefor such rate or rates, tolls, charges, or schedules as shall be just and reasonable. If upon such investigation it shall be found that any regulation, time schedule, act, or service complained of is unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise in violation of any of the provisions of this section, or if it is to be found that reasonable service is not supplied, the commission shall have power to determine and substitute therefor such other regulations, time schedules, service, or acts and to make such orders respecting and such changes in such regulations, time schedules, service, or acts as shall be just and reasonable. And upon any investigation for the purpose of determining upon and requiring any reasonable extension or extensions of lines or of service that shall promise to be compensatory within a reasonable time, the commission shall have power to fix, determine, and require every such extension or extensions to be made and the terms and conditions upon which the same shall be made: *Provided*, That no hearing shall be had and no order shall be made respecting such extension or extensions without notice to the public utility affected thereby, as provided in paragraph forty of this section.

Par. 42. That if upon investigation it shall be found that any rate, toll, charge, schedule, or joint rate, or rates, is unjust, unreasonable, insufficient, or unjustly discriminatory or preferential, or otherwise in violation of any of the provisions of this section, or that any time schedule, regulation, act, or service complained of is unjust, unreasonable, insufficient, preferential, or otherwise in violation of any of the provisions of this section, or if it be found that reasonable service is not supplied, the public utility found to be at fault shall pay the expenses incurred by the commission upon such investigation.

Par. 43. That the commission may, in its discretion, when complaint is made of more than one rate or charge, order separate hearings thereon, and may consider and determine the several matters

complained of separately and at such times as it may prescribe. No complaint shall of necessity at any time be dismissed because of the absence of direct damage to the complainant.

Par. 44. That whenever the commission shall believe that any rate or charge may be unreasonable or unjustly discriminatory, or that any reasonable service is not supplied, or that an investigation of any matter relating to any public utility should for any reason be made, it may, on its own motion, summarily investigate the same with or without notice.

Par. 45. That if after making such investigation the commission becomes satisfied that sufficient grounds exist to warrant a formal hearing being ordered as to the matters so investigated, it shall furnish such public utility interested a statement notifying the public utility of the matters under investigation. Ten days after such notice has been given the commission may proceed to set a time and place for a hearing and an investigation as hereinbefore provided.

Par. 46. That notice of the time and place for such hearing shall be given to the public utility and to such other interested persons as the commission shall deem necessary, as provided in paragraph forty of this section, and thereafter proceedings shall be had and conducted in reference to the matter investigated in like manner as though complaint had been filed with the commission relative to the matter investigated, and the same order or orders may be made in reference thereto as if such investigation had been made on complaint.

Par. 47. That any public utility may make complaint as to any matter affecting its own product or service with like effect as though made by the commission or upon reasonable complaint as hereinbefore provided.

Par. 48. That each of the commissioners and every agent provided for in paragraph thirty-six of this section, for the purposes mentioned in this section, shall have power to administer oaths, certify to official acts, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents, and testimony. In case of disobedience on the part of any person or persons to comply with any order of the commission or any commissioner, or any subpoena, or on the refusal of any witness to testify to any matter regarding which he may be interrogated before the commission or its agent authorized, it shall be the duty of the Supreme Court of the District of Columbia, or a judge thereof, on application of a commissioner, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

Par. 49. That each witness who shall appear before the commission or its agent by its order shall receive for his attendance the fees and mileage now provided for witnesses in the Supreme Court of the District of Columbia, which shall be audited and paid in the same manner as fees in criminal cases within the District of Columbia are audited and paid, upon the presentation of proper vouchers, sworn to by such witnesses and approved by the chairman of the commission. No witnesses subpoenaed at the instance of parties

other than the commission shall be entitled to compensation for attendance or travel unless the commission shall certify that his testimony was material to the matter investigated, and that his attendance as a witness was reasonably necessary.

Par. 50. That the commission or any party may, in any investigation, cause the depositions of witnesses residing within or without the District of Columbia to be taken in the manner prescribed by law for like depositions in civil actions in circuit courts.

Par. 51. That a full and complete record shall be kept of all proceedings had before the commission or its agents on any formal investigation had, and all testimony shall be taken down by a stenographer appointed by the commission.

Par. 52. That whenever any complaint is served upon the commission under the provisions of this section the commission shall, before said action is reached for trial, cause a certified transcript of all proceedings had and testimony taken upon such investigation to be filed with the clerk of the Supreme Court of the District of Columbia.

Par. 53. That a transcribed copy of the evidence and proceedings, or any specific part thereof, in any investigation taken by a stenographer appointed by the commission, being certified by such stenographer to be a true and correct transcript of all the testimony in the investigation or of a particular witness, or of other specific part thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had in such investigation so purporting to be taken and transcribed, shall be received in evidence with the same effect as if such reporter were present and testified to the fact so certified. A copy of such transcript shall be furnished on demand, free of cost, to any party to such investigation.

Par. 54. That no franchise nor any right to or under any franchise to own or operate any public utility as defined in this section or to use the tracks of any street railroad shall be assigned, transferred, or leased, nor shall any contract or agreement with reference to or affecting any such franchise or right be valid or of any force or effect whatsoever unless the assignment, transfer, lease, contract, or agreement shall have been approved by the commission in writing. The permission and approval of the commission to the assignment, transfer, or lease of a franchise under this paragraph shall not be construed to revive or validate any lapsed or invalid franchise or to enlarge or add to the powers and privileges contained in the grant of any franchise or to waive any forfeiture. It shall be unlawful for any street railroad corporation, gas corporation, electric corporation, telephone corporation, telegraph corporation, or other public utility corporation, directly or indirectly, to acquire the stock or bonds of any other corporation incorporated for or engaged in the same or similar business as it is, unless authorized in writing to do so by the commission, and every contract, transfer, agreement for transfer or assignment of any such stock or bonds without such written authority shall be void and of no effect.

Par. 55. That the commission shall, within its jurisdiction—

Have general supervision of all gas corporations and electrical corporations having authority under any general or special law or

under any charter or franchise to lay down, erect, or maintain wires, pipes, conduits, ducts, or other fixtures in, over, or under the streets, highways, and public places in the District of Columbia for the purpose of furnishing or distributing gas or of furnishing or transmitting electricity for light, heat, or power, or maintaining underground conduits or ducts for electrical conductors, and all gas plants and electric plants owned, leased, or operated by any corporation.

Investigate and ascertain, from time to time, the quality and quantity of gas supplied by persons or corporations; examine or investigate the methods employed by such persons and corporations in manufacturing, distributing, and supplying gas or electricity for light, heat, or power, and in transmitting the same, and have power to order such reasonable improvements as will reasonably promote the public interest, preserve the public health, and protect those using such gas or electricity and those employed in the manufacture and distribution thereof or in the manufacture and operation of the works, wires, poles, lines, conduits, ducts, and systems connected therewith, and have power to order reasonable improvements and extensions of the works, wires, poles, lines, conduits, ducts, and other reasonable devices, apparatus, and property of gas corporations and electrical corporations.

Have power by order to fix from time to time standards for determining the purity or the measurement of the illuminating power of gas to be manufactured, distributed, or sold by persons or corporations for lighting, heating, or power purposes, and to prescribe from time to time the efficiency of the electric supply system, of the current supplied, and of the lamps furnished by the persons or corporations generating and selling electric current, and by order to require the gas so manufactured, distributed, or sold to equal the standards so fixed by it, and to prescribe from time to time the reasonable minimum and maximum pressure at which gas shall be delivered by said persons or corporations. For the purpose of determining whether the gas manufactured, distributed, or sold by such persons or corporations for lighting, heating, or power purposes conforms to the standards of illuminating power, purity, and pressure, and for the purpose of determining whether the efficiency of the electric supply system, of the current supplied, and of the lamps furnished conforms to the orders issued by the commission, the commission shall have power, of its own motion, to examine and investigate the plants and methods employed in manufacturing, delivering, and supplying gas or electricity, and shall have access, through its members or persons employed and authorized by it to make such examinations and investigations, to all parts of the manufacturing plants owned, used, or operated for the manufacture, transmission, or distribution of gas or electricity by any such person or corporation. Any employee or agent of the commission who divulges any fact or information which may come to his knowledge during the course of any such inspection or examination, except in so far as he may be directed by the commission, or by a court or judge thereof, or authorized by law, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than \$50 nor more than \$500 for each offense.

Par. 56. That no gas corporation or electrical corporation shall begin the construction of a gas plant or electric plant without first having obtained the permission and approval of the commission.

Par. 57. That the commission shall appoint inspectors of gas meters, whose duty it shall be, when required by the commission, to inspect, examine, prove, and ascertain the accuracy of any and all gas meters used or intended to be used for measuring or ascertaining the quantity of gas for light, heat, or power furnished by any person or corporation to or for the use of any person or corporation, and when found to be or made to be correct, the inspector shall seal all such meters and each of them with some suitable device, which device shall be recorded in the office of the commission.

No corporation or person shall furnish, set, or put in use any gas meter which shall not have been inspected, proved, and sealed by an inspector of the commission.

The commission shall appoint inspectors of electric meters, whose duty it shall be, when required by the commission, to inspect, examine, and ascertain the accuracy of any and all electric meters used or intended to be used for measuring and ascertaining the quantity of electric current furnished for light, heat, or power by any person or corporation to or for the use of any person or corporation, and to inspect, examine, and ascertain the accuracy of all apparatus for testing and proving the accuracy of electric meters; and when found to be or made to be correct the inspector shall stamp or mark all such meters and apparatus with some suitable device, which device shall be recorded in the office of the commission. No corporation or person shall furnish, set, or put in use any electric meter the type of which shall not have been approved by the commission or any meter not approved by an inspector of the commission.

Every gas corporation and electrical corporation shall provide, repair, and maintain such suitable premises and apparatus and facilities as may be required and approved by the commission for testing and proving the accuracy of gas and electric meters furnished for use by it, and by which apparatus every meter may be tested.

If any consumer to whom a meter has been furnished shall request the commission in writing to inspect such meter, the commission shall have the same inspected and tested; if the same, on being so tested, shall be found to be more than four per centum, if an electric meter, or more than two per centum, if a gas meter, defective or incorrect to the prejudice of the consumer, the inspector shall order the gas or electrical corporation forthwith to remove the same and to place instead a correct meter, and the expense of such inspection and test shall be borne by the corporation; if the same, on being so tested, shall be found to be correct, the expense of such inspection and test shall be borne by the consumer.

The commission shall prescribe such rules and regulations to carry into effect the provisions of this paragraph as it may deem necessary and shall fix uniform reasonable charges for the inspection and testing of meters upon complaint.

Par. 58. That if it be alleged and established in an action brought in any court for the collection of any charge for gas or electricity that a price has been demanded in excess of that fixed by the commission or by statute no recovery shall be had therein, but the fact that such excessive charges have been made shall be a complete defense to such action.

Par. 59. That the appointment and power to remove the inspector of gas and meters and assistant inspectors of gas and meters from office is hereby vested in the commission. All the powers and duties of such inspectors conferred and imposed by statute shall be exercised and performed under the supervision and control of the commission: *Provided*, That the salaries of the inspector of gas and meters and every assistant inspector of gas and meters shall continue to be paid as heretofore and as now provided by Act of Congress.

Par. 60. That the inspector of gas and meters now provided for by law shall transfer and deliver to the commission all books, maps, papers, records, apparatus, and the property of whatsoever description in his possession, and said commission is authorized to take possession of all books, maps, papers, records, apparatus, and property of whatsoever description.

Par. 61. That all public utilities to which an order of the commission applies shall make such changes in their schedules on file as may be necessary to make the same conform to said order, and no change shall thereafter be made by any public utility in any such rates, tolls, or charges, or in any joint rate or rates, without the approval of the commission. Certified copies of all other orders of the commission shall be delivered to the public utility affected thereby in like manner, and the same shall take effect within such reasonable time thereafter as the commission shall prescribe.

Par. 62. That the commission may, at any time, upon notice to the public utility and after opportunity to be heard as provided in paragraph forty of this section, rescind, alter, or amend any order fixing any rate or rates, tolls, charges, or schedules; or any other order made by the commission, and certified copies of the same shall be served and take effect as herein provided for original orders.

Par. 63. That all rates, tolls, charges, time and condition of payment thereof, schedules, and joint rates fixed by the commission shall be in force and shall be *prima facie* reasonable until finally found otherwise in an action brought for that purpose.

Par. 64. That if at any time the commission shall be in doubt of the elements of value to be by them considered arriving at the true valuation under the provisions of this section, they are authorized and empowered to institute a proceeding in equity in the Supreme Court of the District of Columbia petitioning said court to instruct them as to the element or elements of value to be by them considered as aforesaid, and the particular utility under valuation at the time shall be made party defendant in said action.

That any public utility and any person or corporation interest (ed) being dissatisfied with any order or decision of the commission fixing any valuation, rate or rates, tolls, charges, schedules, joint rate or rates, or regulation, requirement, act, service or other thing complained of may commence a proceeding in equity in the Supreme Court of the District of Columbia against the commission, as defendants, to vacate, set aside, or modify any such decision or order on the ground that the valuation, rate or rates, tolls, charges, schedules, joint rate or rates, or regulation, requirement, act, service or other thing complained of fixed in such order is unlawful, inadequate, or unreasonable. The answer of the commission, on any

such action being instituted against it, or the answer of any public utility on any such action being commenced by said commission against it, shall be filed within ten days, whereupon said proceeding shall be at issue and stand ready for trial.

All such proceedings shall have precedence over any civil cause of a different nature pending in such court, and the Supreme Court of the District of Columbia shall always be deemed open for the trial thereof, and the same shall be tried and determined as are equity proceedings in said court. Any party, including said commission, may appeal from the order or decree of said court to the Court of Appeals of the District of Columbia, and therefrom to the Supreme Court of the United States, which shall thereupon have and take jurisdiction in every such appeal. Pending the decision of said appeal the commission may suspend the decision or order appealed from for such a period as it may deem fair and reasonable under the circumstances: *Provided*, That no appeal, unless the court or the commission shall so order, shall operate to stay any order of the commission: *And provided further*, That said commission shall not, nor shall any of its members, officers, agents, or employees, be taxed with any costs, nor shall they or any of them be required to give any supersedeas bond or security for costs or damages on any appeal whatsoever. Said commission, or any of its members, officers, agents, or employees shall not be liable to suit or action or for any judgment or decree for any damages, loss, or injury claimed by any public utility or person, nor required in any case to make any deposit for costs or pay for any service to the clerks of any court or to the marshal of the United States.

Par. 65. That every proceeding, action, or suit to set aside, vacate, or amend any determination or order of the commission, or to enjoin the enforcement thereof, or to prevent in any way such order or determination from becoming effective shall be commenced, and every appeal to the courts or right of recourse to the courts shall be taken or exercised, within one hundred and twenty days after the entry or rendition of such order or determination, and the right to commence any such action, proceeding, or suit, or to take or exercise any such appeal or right of recourse to the courts, shall terminate absolutely at the end of such one hundred and twenty days.

Par. 66. That no injunction shall issue suspending or staying any order of the commission, except upon application to the Supreme Court of the District of Columbia or a judge thereof, and only upon notice to the commission and after hearing had.

Par. 67. That if upon trial of such proceeding or suit evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the commission or its authorized agent, or additional thereto, the court, before proceeding to render judgment, unless the parties to such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission, and shall stay further proceedings in said proceeding for fifteen days from the date of such transmission. Upon the receipt of such evidence the commission shall consider the same and may alter, modify, amend, or rescind its order relating to such valuation, rate or rates, tolls, charges, schedules, joint rate or rates, time schedules, regulations, act, or service

complained of in said action, and shall report its action thereon to said court within ten days from receipt of such evidence.

Par. 68. That if the commission shall rescind its order complained of the proceeding or suit shall be dismissed; if it shall alter, modify, or amend the same, such altered, modified, or amended order shall take the place of the original order complained of and judgment shall be rendered thereon as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order, and costs shall be taxed as may be deemed proper under the circumstances.

Par. 69. That in all trials, actions, and proceedings arising under the provisions of this section or growing out of the exercise of the authority and powers granted herein to the commission, the burden of proof shall be upon the party adverse to such commission or seeking to set aside any determination, requirement, direction, or order of said commission to show by clear and satisfactory evidence that the determination, requirement, direction, or order of the commission complained of is inadequate, unreasonable, or unlawful, as the case may be.

Par. 70. That no person shall be excused from testifying or from producing books, accounts, and papers in any proceeding based upon or growing out of any violation of the provisions of this section, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence: *Provided*, That no person so testifying shall be exempted from prosecution or punishment for perjury: *Provided further*, That the immunity hereby conferred shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath.

Par. 71. That upon application of any person the commission shall furnish certified copies, under the seal of the commission, of any order made by it, which shall be prima facie evidence of the facts stated therein.

Par. 72. That the power to create liens on corporate property by public utilities in the District of Columbia is hereby declared to be a special privilege, the right of supervision, regulation, restriction, and control of which is hereby vested in the public utilities commission of the District of Columbia, and such power shall be exercised according to the provisions of this section.

Par. 73. That no public utility shall hereafter issue any stocks, stock certificates, bonds, mortgages, or any other evidences of indebtedness payable in more than one year from date, until it shall have first obtained the certificate of the commission showing authority for such issue from the commission.

Par. 74. That no public utility shall issue any stocks, certificates of stock, bonds, or other evidences of indebtedness for money, property, or services, either directly or indirectly, nor shall it receive any money, property, or services in payment of the same, either

directly or indirectly, until there shall have been recorded upon the books of such public utility the certificate of the commission in this section provided for.

Par. 75. That no public utility shall declare any stock, bond, or scrip dividend or divide the proceeds of the sale of any stock, bond, or scrip among its stockholders.

Par. 76. That no public utility shall issue any stocks, certificates of stock, bonds, or other evidences of indebtedness secured on its property in the District of Columbia for the purpose of any reorganization or consolidation in excess of the total amount of the stocks, certificates of stock, bonds, or other evidences of indebtedness then outstanding against the public utilities so reorganizing or consolidating, and no such public utility shall purchase the property of any other public utility for the purpose of effecting a consolidation until the commission shall have determined and set forth in writing that said consolidation will be in the public interest, nor until the commission shall have approved in writing the terms upon which said consolidation shall be made.

Par. 77. That no public utility shall apply the proceeds of any such stock, certificates of stock, bonds, or other evidences of indebtedness to any other purpose or issue the same on any less favorable terms than that specified in the certificate issued by the commission.

Par. 78. That all stocks, certificates of stock, bonds, and other evidences of indebtedness issued contrary to the provisions of this section shall be void.

Par. 79. That any public utility, or any agent, director, or officer thereof, who shall, directly or indirectly, issue or cause to be issued any stocks, certificates of stock, bonds, or other evidences of indebtedness contrary to the provisions of this section, or who shall apply the proceeds from the sale thereof to any purposes other than that specified in the certificate of the commission, shall forfeit and pay into the Treasury of the United States, one-half to the credit of the District of Columbia, not less than \$1,000 nor more than \$10,000 for each offense.

Par. 80. That each and every director, president, secretary, or other official of any such public utility who shall make any false statement to secure the issue of any stock, certificate of stock, bond, mortgage, or other evidence of indebtedness, or who shall, by false statement knowingly made, procure of the commission the making of the certificate herein provided, or issue, with knowledge of such fraud, negotiate, or cause to be negotiated, any such stock, certificate of stock, bond, mortgage, or other evidence of indebtedness in violation of this section, shall be guilty of a felony, and, upon conviction thereof, shall be punished by a fine of not less than \$1,000, or by imprisonment for a term of not less than one year, or by both such fine and imprisonment, in the discretion of the court.

Par. 81. That if any public utility or any agent or officer thereof shall, directly or indirectly, by any device whatsoever, or otherwise, charge, demand, collect, or receive from any person, firm, or corporation a greater or less compensation for any service rendered or to be rendered by it in or affecting or relating to the conduct of a street railroad or street railroad corporation, common carrier, gas plant, gas corporation, electric plant, electric corporation, water

power company, telephone line, telephone corporation, telegraph line, or telegraph corporation, or pipe line company, or to the production, transmission, delivery, or furnishing of heat, light, water, or power, or the conveyance of telephone or telegraph messages, or for any service in connection therewith than that prescribed in the public schedules or tariffs then in force or established as provided herein, or than it charges, demands, collects, or receives from any other person, firm, or corporation other than one conducting a like business for a like and contemporaneous service, such public utility shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be a misdemeanor and unlawful, and upon conviction thereof shall forfeit and pay to the District of Columbia not less than \$100 nor more than \$1,000 for each offense; and such agent or officer so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$50 nor more than \$100 for each offense.

Par. 82. That it shall be unlawful for any public utility to demand, charge, collect, or receive from any person, firm, or corporation less compensation for any service rendered or to be rendered by said public utility in consideration of the furnishing by said person, firm, or corporation of any part of the facilities incident thereto: *Provided*, That nothing herein shall be construed as prohibiting any public utility from renting any facilities incident to the production, transmission, delivery or furnishing of heat, light, water, or power, or the supply of any liquid, steam, or air, through pipes or tubing, or the conveyance of telegraph or telephone messages, and paying a reasonable rental therefor; or as requiring any public utility to furnish any part of such appliances which are situated in and upon the premises of any consumer or user, except telephone station equipment upon the subscriber's premises, and, unless otherwise ordered by the commission, meters, and appliances for measurements of any product or service.

Par. 83. That it shall be unlawful for any person, firm, or corporation to solicit, accept, or receive any rebate, concession, or discrimination in respect to any service in or affecting or relating to any public utility or the production, transmission, delivery, or furnishing of heat, light, water, or power, or any liquid, steam, or air, or the conveying of telegraph or telephone messages within the District of Columbia, or for any service in connection therewith whereby any such service shall, by any device whatsoever or otherwise, be rendered free or at a less rate than that named in the schedules and tariffs in force as provided in this section, or whereby any service or advantage is received other than is in this section specified. Any person, firm, or corporation violating the provisions of this paragraph shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than \$200 nor more than \$1,000 for each offense.

Par. 84. That any officer, agent, or employee of any public utility who shall fail or refuse to fill out and return any blanks, as required by this section, or shall fail or refuse to answer any question therein propounded, or shall knowingly or willfully give a false answer to any such question, or shall evade the answer to any such question where the fact inquired of is within his

knowledge, or who shall, upon proper demand, fail or refuse to exhibit to the commission or any commissioner, or any person authorized to examine the same, any book, paper, account, record, or memoranda of such public utility which is in his possession or under his control, or who shall fail to properly use and keep his system of accounting, or any part thereof, as prescribed by the commission under this section, or who shall refuse to do any act or thing in connection with such system of accounting when so directed by the commission or its authorized representative shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$200 nor more than \$1,000 for each offense, and a penalty of not less than \$500 nor more than \$2,000 shall, on conviction, be imposed on the public utility for each such offense when such officer, agent, or employee acted in obedience to the direction, construction, or request of such public utility or any general officer thereof.

Par. 85. That if any public utility shall violate any provision of this section, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it for which a penalty has not been provided, or shall fail, neglect, or refuse to obey any lawful requirement or order made by the commission, or any judgment or decree made by any court upon its application, for every such violation, failure, or refusal such public utility shall forfeit and pay to the District of Columbia the sum of \$200 for each such offense. In construing and enforcing the provisions of this paragraph, the act, omission, or failure of any officer, agent, or other person acting for or employed by any public utility acting within the scope of his employment and instructions shall in every case be deemed to be the act, omission, or failure of such public utility.

Par. 86. That any person who shall destroy, injure, or interfere with any apparatus or appliance owned or operated by or in charge of the commission or its agent shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine not exceeding \$100 or imprisonment for a period not exceeding thirty days, or both.

Par. 87. That every day during which any public utility, or any officer, agent, or employee thereof, shall fail knowingly or willfully to observe and comply with any order or direction of the commission, or to perform any duty enjoined by this section, shall constitute a separate and distinct violation of such order, or direction, or of this section, as the case may be.

Par. 88. That whenever, after hearing and investigation as provided in this section, the commission shall find that any rate, toll, charge, regulation, or practice of any public utility within the District of Columbia is unreasonable or discriminatory, it shall have the power to regulate, fix, and determine the same as provided in this section.

Par. 89. That every public utility shall, whenever an accident attended with loss of human life or personal injury without loss of human life occurs within the District of Columbia, upon its premises, or directly or indirectly arising from or connected with its maintenance or operation, give immediate notice thereof to the commission. In the event of any such accident, the commission, if it deem the public interest requires it, shall cause an investigation to be made forthwith.

Par. 90. That the commission shall inquire into any neglect or violation of the laws or regulations in force in the District of Columbia by any public utility doing business therein, or by the officers, agents, or employees thereof, or by any person operating the plant of any public utility, and shall have the power, and it shall be its duty, to enforce the provisions of this section as well as all other laws relating to public utilities.

Par. 91. That the corporation counsel of the District of Columbia shall be the general counsel of the commission and shall receive from and be paid out of the appropriations provided and to be provided for the expenses of the commission in addition to his compensation otherwise provided by law the sum of \$1,000 per annum, payable in equal monthly installments. It shall be the duty of the general counsel to represent and appear for the commission in all actions and proceedings involving any question under this section, or under or in reference to any act, order, or proceeding of the commission, and if directed to do so by the commission, to intervene, if possible, in any action or proceeding in which any such question is involved; to commence and prosecute all actions and proceedings directed or authorized by the commission, and to expedite, in every way possible, final and just determination of all such actions and proceedings; to advise the commission and each commissioner, when so requested, in regard to all matters in connection with the powers and duties of the commission and of the members thereof, and generally to perform all duties and services as attorney and counsel to the commission which the commission may reasonably require of him. The assistants to the corporation counsel shall perform such duties relating to matters arising under this section and all other matters as the corporation counsel may prescribe. The commission may, if at any time it deems necessary, employ other attorneys at law as additional assistants to the said general counsel for the performance of such extraordinary legal services for or in behalf of the commission at such special compensation for such additional assistants as the commission may prescribe, which said compensation shall be paid out of the appropriations herein provided and hereafter to be provided for the expenses of the commission. The said corporation counsel and any of his assistants designated by him or by the commission shall have the right to appear and prosecute any civil, quasi criminal, or criminal case to recover any penalty, forfeiture, fine, or for the imposition of any punishment provided for in this section whether instituted by or on behalf of the United States of America or by or on behalf of the District of Columbia or otherwise, and on every appeal provided by law. The commission may enforce its orders in any case by mandamus or other legal or equitable remedy in any court of competent jurisdiction, and it shall be the duty of the corporation counsel or his assistants to represent the commission in every such proceeding.

Par. 92. That the provisions of this section shall be interpreted and construed liberally in order to accomplish the purposes thereof, and where any specific power or authority is given the commission by the provisions of this section the enumeration thereof shall not be held to exclude or impair any power or authority otherwise in this section conferred on said commission. The commission hereby

created shall have, in addition to the powers in this section specified, metioned, and indicated all additional, implied, and incidental power which may be proper and necessary to effect and carry out, perform, and execute all the said powers herein specified, mentioned, and indicated. A substantial compliance with the requirements of this section shall be sufficient to give effect to all the rules, orders, acts, and regulations of the commission, and they shall not be declared inoperative, illegal, or void for any omission of a technical nature in respect thereto. That each paragraph of this section, and every part of each paragraph, are hereby declared to be independent paragraphs and the holding of any paragraph or paragraphs or part or parts thereof to be void, ineffective, or unconstitutional for any cause shall not be deemed to affect any other paragraph or part thereof.

Par. 93. That this section shall not have the effect to release or waive any right of action by the United States, or by the District of Columbia, or by any person, for any right, penalty, or forfeiture which may have arisen or which may hereafter arise under any law of the United States or any regulation in force in the District of Columbia; and all penalties and forfeitures accruing under this section shall be cumulative, and a suit for any recovery of one shall not be a bar to the recovery of any other penalty.

Par. 94. That, first, unless the commission shall otherwise order, it shall be unlawful for any public utility within the District of Columbia to demand, collect, or receive a greater compensation for any service than the charge fixed on the lowest schedules of rates for the same service under the law in force at the date of the passage of this section; second, every public utility in the District of Columbia shall, within thirty days after the passage and publication of this section, file in the office of the commission copies of all schedules of rates and charges, including joint rates, in force at the date of the passage of this section; third, any public utility desiring to advance or discontinue any such rate or rates may make application to the commission in writing, stating the advance in or discontinuance of the rate or rates desired, giving the reasons for such advance or discontinuance; fourth, upon receiving such application the commission shall fix a time and place for hearing, and give such notice to interested parties as shall be proper and reasonable; if, after such hearing and investigation, the commission shall find that the change or discontinuance applied for is reasonable, fair, and just, it shall grant the application, either in whole or in part; fifth, any public utility being dissatisfied with any order of the commission made under the provisions of this paragraph may commence a proceeding against it in the Supreme Court of the District of Columbia in the manner as is in this section hereinbefore provided, which action shall be tried and determined in the same manner as is in this section hereinbefore provided.

Par. 95. The commission shall have the power in each and every instance to employ and to prescribe the duties of such officers, clerks, stenographers, typewriters, inspectors, experts, and employees as it may deem necessary to carry out the provisions of this section, and to fix and pay their compensation within the appropriations provided by Congress. The commission is hereby authorized, within the appropriation made by Congress, to incur and pay incidental ex-

penses for postage, printing, blanks, books, law books, books of reference, and periodicals, stationery, binding, rebinding, repairing and preservation of records, desks, office furniture and supplies, traveling expenses of the commission, the commissioners, and every officer, agent, and employee thereof, and all other general expenses reasonably necessary to be incurred in carrying out the purposes of this section. All payments and disbursements, as provided in this section, shall be made by the disbursing officer of the District of Columbia upon proper vouchers, certified as required by the commission; and the commission is hereby also granted power and authority to designate and appoint during its pleasure such officers, clerks, inspectors, and employees of the District of Columbia and members of the Metropolitan police force of the District of Columbia to perform any of the duties which the commission may from time to time, respectively, assign to them, and to employ any assistance and fix compensation therefor within the limits of the appropriations for its use herein or hereafter made by Act of Congress.

Par. 96. That the said commission shall hereafter exercise all the powers and have all the authority now vested by law in the Interstate Commerce Commission by virtue and under the Act of Congress approved May twenty-third, nineteen hundred and eight, entitled "An Act authorizing certain extensions to be made of the lines of the Anacostia and Potomac River Railroad Company, the Washington Railway and Electric Company, the City and Suburban Railway of Washington, and the Capital Traction Company, in the District of Columbia, and for other purposes," and said power and authority shall no longer be exercised by said Interstate Commerce Commission: *Provided*, That the orders, rules, and regulations made by the Interstate Commerce Commission shall continue to be in force until changed, repealed, altered, or amended by the commission created by this section, which said commission is hereby given power and jurisdiction to issue and, at its pleasure, to revoke all permits, or licenses, to carry this section into effect, and its rules and regulations shall be valid and binding on all public-service corporations and on all persons.

Whenever the commission shall be of opinion, after hearing had upon its own motion or upon complaint, that repairs, improvements, or changes in any street railroad, gas plant, electric plant, telephone line, telegraph line, pipe line, water-power plant, or the facilities of any common carrier ought reasonably to be made, or that any addition of service or equipment ought reasonably to be made thereto, or that the vehicles or cars of any street railroad or common carrier are unclean, insanitary, uncomfortable, inconvenient, or improperly equipped, operated, or maintained, or are in need of paint, or unsightly in appearance, or that any addition ought reasonably to be made thereto, in order to promote the comfort or convenience of the public or employees, or in order to secure adequate service or facilities, the commission shall have power to make and serve an order directing that such repairs, improvements, changes, or additions to service or equipment be made within a reasonable time and in a manner to be specified therein, and every such public utility is hereby required and directed to obey every such order of the commission.

Par. 97. That all the powers created by this section and the duty of carrying this section into effect and enforcing the provisions thereof are hereby vested in and imposed on the Commissioners of the District of Columbia as a governmental and administrative agency, and said powers shall be exercised and said duties performed as additional and superadded powers to their powers and duties as Commissioners of the District of Columbia. The powers, authority, and duties hereby imposed on and granted said commissioners shall be permanent and are hereby imposed on and granted to the present Commissioners of the District of Columbia and their successors in office. The commission created by this section shall, so soon as convenient after its passage, organize by electing one of its number chairman, who shall serve until the first Monday in January, nineteen hundred and fourteen. On the first Monday in January in each odd-numbered year the commissioners shall meet and elect a chairman, who shall serve for two years and until his successor is elected. A majority of said commissioners shall constitute a quorum to do business, and any vacancy shall not impair the right of the remaining commissioners to exercise all the powers of the commission. Any investigation, inquiry, or hearing within the powers of the commission may be made or held by any commissioner, whose acts and orders, when approved by the commission, shall be deemed to be the order of the commission. The commission shall have power to adopt and publish rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings pertaining to public utilities.

No commissioner shall be directly or indirectly interested in any public utility or in any stock, bond, mortgage, security, or contract of any such public utility; and if any such commissioner shall voluntarily become so interested his office shall ipso facto become vacant; and if any such commissioner shall become so interested otherwise than voluntarily he shall, within a reasonable time, divest himself of such interest, and if he fails so to do his office shall become vacant. Before entering upon the duties of his office each commissioner, the secretary of the commission, the counsel of the commission, and every employee of said commission shall take and subscribe the constitutional oath of office, and shall in addition thereto make oath or affirmation before and file with the clerk of the Supreme Court of the District of Columbia that he is not pecuniarily interested, voluntarily or involuntarily, in any public utility in the District of Columbia or elsewhere.

Par. 98. That the sum of \$40,000, or so much thereof as may be necessary, is hereby appropriated to carry out the provisions of this section, one-half out of the revenues of the District of Columbia and one-half out of any moneys in the Treasury not otherwise appropriated, and all moneys received from fines, forfeitures, and penalties shall be paid into the Treasury of the United States, one-half to the credit of the District of Columbia.

Par. 99. That all the duties, powers, and authority of the Commissioners of the District of Columbia shall continue and remain in full force and effect notwithstanding this section; and all powers, authority and duties of the municipality known as the District of Columbia and all rights vested in said municipality shall

continue and remain in full force and effect notwithstanding this section. All the lawful ordinances and regulations made by the Commissioners of the District of Columbia as such, and all other lawful municipal ordinances and regulations, shall continue and remain in full force and effect, and may be altered, changed, or amended, and new ordinances and regulations may be made by the Commissioners of the District of Columbia, acting as such, hereafter, notwithstanding this section: *Provided*, That when any order of the commission created by this section shall be made which shall be inconsistent and repugnant to any municipal ordinance or regulation, or any ordinance or regulation made or to be made by the Commissioners of the District of Columbia, acting as such, then and in such event the order of the commission created by this section shall be given full force and effect, notwithstanding such municipal ordinance or regulation.

Par. 100. That the board of directors of every public utility shall consist of not more than fifteen nor less than seven members, within which limitation the membership may be in any case increased or diminished, as the stockholders may from time to time determine.

Par. 101. That, except as modified or changed by this section and until modified or changed under its provisions, all charters, statutes, laws, ordinances, and regulations now in force shall remain and continue to be in full force and effect until altered, amended, or repealed according to law. *Provided*, That all charters, statutes, Acts, and parts of Acts, laws, ordinances, and regulations inconsistent and repugnant to the provisions of this section, and only so far as inconsistent and repugnant thereto, are hereby repealed.

Par. 102. That this section shall not affect pending actions or proceedings, civil or criminal, or quasi criminal, but the same may be prosecuted or defended as heretofore provided by law or regulation.

Par. 103. That Congress reserves the right to alter, amend, or repeal this section.

Approved, March 4, 1913 (37 Stat. L. pt. 1, p. 974).

ANTI-MERGER LAW

(See Par. 54 of Public Utilities law)

[Extract from an Act (Public No. 435) making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1914, and for other purposes, approved March 4, 1913, section 11 of which provides, as follows:]

SEC. 11. That it shall be unlawful for any foreign public utility corporation, or for any foreign or local holding corporation, or for any local street railroad corporation, gas corporation, electric corporation, telephone corporation, telegraph corporation, or any other local public utility corporation, directly or indirectly, to own, control, or hold or vote stock or bonds of any public utility corporation organized under any general incorporation law or special Act of the United States or authorized under any law of the United States to do business in the District of Columbia, except as heretofore or hereafter ex-

pressly authorized by Congress; and it shall be unlawful for any public utility corporation organized or authorized as aforesaid to sell or transfer any portion of its stock or bonds to any other public utility corporation or holding corporation whatsoever, unless heretofore or hereafter expressly authorized by Congress so to do; and every contract, transfer, agreement to transfer, or assignment by any said public utility corporation organized or authorized as aforesaid of any portion of its stock or bonds without such authority shall be utterly void and of no effect. That the Supreme Court of the District of Columbia, on application of the District of Columbia by its Commissioners or attorney, or on application of the United States by its proper officer, or on application of any shareholder interested in any such corporations, shall have jurisdiction in equity to dissolve any public utility corporation organized under any general incorporation law or special section of the United States, or authorized under any law of the United States to do business in the District of Columbia, for violation of any of the provisions of this section or of their charters; and further, to require any foreign public utility corporation, or foreign or local holding corporation which owns, holds, or controls, or which shall hereafter own, hold, or control any such stock or bonds contrary to any of the provisions of this section, to sell or dispose of the same and to refrain from voting such stock or bonds: *Provided*, That in case the allegations in any bill filed in said court relate to the ownership of stock or bonds of a local corporation by any foreign corporation, then it must be shown to the satisfaction of the court that such ownership includes at least twenty per centum of the capital stock of the local corporation.

That the word "foreign" when used in this section shall be construed to mean foreign to the District of Columbia, and the word "local" when used in this section shall be construed to mean local in the District of Columbia.

That each provision of this section and every part of each provision is hereby declared to be an independent provision, and the holding of any provision or provisions, or part or parts thereof, to be void, ineffective, or unconstitutional for any cause shall not be deemed to affect any other provision or part thereof.

Approved, March 4, 1913 (37 Stat. L., pt. 1, p. 1006).

AMENDMENTS TO PUBLIC UTILITIES ACT

[Extract from an Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1916, and for other purposes, approved March 3, 1915 (38 Stat. L. p. 900)]

* * * * *

The several street railway companies in the District of Columbia are authorized and required to transport free of charge all members of the Metropolitan Police, crossing police, park police, and Fire Department of the District of Columbia when in uniform and in the performance of their duties.

[PUBLIC No. 23—64TH CONGRESS]

[H. R. 8810]

An Act To amend an Act relating to the Public Utilities Commission of the District of Columbia, approved March fourth, nineteen hundred and thirteen

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section eight, paragraph one, of an Act entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes," approved March fourth, nineteen hundred and thirteen, relating to the Public Utilities Commission of the District of Columbia (Thirty-seventh Statutes at Large, page nine hundred and seventy-five), be amended by adding to the names of the companies excluded from the operation of said section, after the words "the Potomac River and Chesapeake Bay," in the third subdivision of said paragraph, on page nine hundred and seventy-five, the following: "and the Washington and Old Dominion Railway, excepting as to the regulation of its operation inside of the District of Columbia."

Approved, February 25, 1916 (39 Stat. L. p. 13).

[PUBLIC—No. 222—64TH CONGRESS]

[H. R. 12712]

An Act To amend an Act entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes"

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section eight, paragraph one, of an Act entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes," approved March fourth, nineteen hundred and thirteen, relating to the Public Utilities Commission of the District of Columbia (Thirty-seventh Statutes at Large, page nine hundred and seventy-five), be amended by adding to the names of the companies excluded from the operation of said section, after the words "steam railroads," in the third subdivision of the last paragraph on page nine hundred and seventy-five, the following: "express companies subject to the jurisdiction of the Interstate Commerce Commission."

Approved, August 21, 1916 (39 Stat. L. p. 521).

[PUBLIC—No. 237—64TH CONGRESS]

[H. R. 16700.]

An Act To amend an Act relating to the Public Utilities Commission of the District of Columbia, approved March fourth, nineteen hundred and thirteen

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section eight, paragraph one, of an Act entitled "An Act making appropriations

to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes," approved March fourth, nineteen hundred and thirteen, relating to the Public Utilities Commission of the District of Columbia (Thirty-seventh Statutes at Large, page nine hundred and seventy-five), as amended by an Act approved February twenty-fifth, nineteen hundred and sixteen, be amended by adding to the names of the companies excluded from the operation of said section, after the words, "and the Washington and Old Dominion Railway, excepting as to the regulation of its operation inside of the District of Columbia," in the third subdivision of said paragraph, on page nine hundred and seventy-five, the following: "And the Washington-Virginia Railway Company, excepting as to the regulation of its operation inside of the District of Columbia."

Approved, August 26, 1916 (39 Stat. L. p. 536).

CONTROL OF DOGS

An Act Relative to the control of dogs in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections three, four, and nine of the Act of Congress approved June nineteenth, eighteen hundred and seventy-eight, entitled "An Act to create a revenue in the District of Columbia by levying a tax upon all dogs therein, to make such dogs personal property, and for other purposes," be, and the same are hereby, amended so as to read as follows:

"SEC. 3. That the pound master of the District of Columbia shall, during the entire year, seize all dogs found running at large without the tax tag issued by the collector aforesaid attached, and all female dogs in heat found running at large, and shall impound the same; and if within forty-eight hours the same are not redeemed by the owners thereof by the payment of two dollars they shall be sold or destroyed, as the pound master may deem advisable; and any sale made by virtue hereof shall be deemed valid to all intents and purposes in all courts of the District of Columbia.

"SEC. 4. That any dog wearing the tax tag hereinbefore provided for, except female dogs in heat, shall be permitted to run at large within the District of Columbia, and any dog wearing the tax tag hereinbefore provided for shall be regarded as personal property in all the courts of said District, and any person injuring or destroying the same shall be liable to a civil action for damages, which, upon proof of said injuring or killing, may be awarded in a sum equal to the value usually put upon such property by persons buying and selling the same, subject to such modifications as the particular circumstances of the case may make proper.

"SEC. 9. That if any owner or possessor of a fierce or dangerous dog shall permit the same to go at large in the District of Columbia, knowing said dog to be fierce or dangerous, to the danger or annoyance of the inhabitants, he shall upon conviction thereof, be punished

by a fine not exceeding twenty dollars; and if such animal shall attack or bite any person, the owner or possessor thereof shall, on conviction, be punished by a fine not exceeding fifty dollars, and in addition to such punishment the court shall adjudge and order that such animal be forthwith delivered to the pound master, and said pound master is hereby authorized and directed to kill such animal so delivered to him.

“If any owner or possessor of a female dog shall permit her to go at large in the District of Columbia while in heat he shall, upon conviction thereof, be punished by a fine not exceeding twenty dollars.”

Approved, June 30, 1902 (32 Stat. L. pt. 1, p. 547).

ACKNOWLEDGMENTS OF DEEDS

An Act For the acknowledgment of deeds and other instruments in the Philippine Islands and Porto Rico affecting land situate in the District of Columbia or any Territory of the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That deeds and other instruments affecting land situate in the District of Columbia or any Territory of the United States may be acknowledged in the Philippine Islands and Porto Rico before any notary public appointed therein by proper authority or any officer therein who has ex officio the powers of a notary public: *Provided*, that the certificate by such notary in the Philippine Islands or in Porto Rico, as the case may be, shall be accompanied by the certificate of the attorney-general of Porto Rico, or the governor or attorney-general of the Philippine Islands to the effect that the notary taking said acknowledgment was in fact the officer he purported to be.

Approved, March 22, 1902 (32 Stat. L. pt. 1, p. 88).

An Act For the acknowledgment of deeds and other instruments in Guam, Samoa, and the Canal Zone to affect lands in the District of Columbia and other Territories

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That deeds and other instruments affecting land situate in the District of Columbia or any Territory of the United States may be acknowledged in the islands of Guam and Samoa or in the Canal Zone before any notary public or judge, appointed therein by proper authority, or by any officer therein who has ex officio the powers of a notary public: *Provided*, That the certificate by such notary in Guam, Samoa, or the Canal Zone, as the case may be, shall be accompanied by the certificate of the governor or acting governor of such place to the effect that the notary taking said acknowledgment was in fact the officer he purported to be; and any deeds or other instruments affecting lands so situate, so acknowledged since the first day of January, nineteen hundred and five, and accompanied by such certificate shall have the same effect as such deeds or other instruments hereafter so acknowledged and certified.

Approved, June 28, 1906 (34 Stat. L., pt. 1, p. 552).

CHILD LABOR LAW

An Act to regulate the employment of child labor in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no child under fourteen years of age shall be employed or permitted to work in the District of Columbia in any factory, workshop, mercantile establishment, store, business office, telegraph or telephone office, restaurant, hotel, apartment house, club, theater, bowling alley, laundry, boot-black stand, or in the distribution or transmission of merchandise or messages. No such child shall be employed in any work performed for wages or other compensation, to whomsoever payable, during the hours when the public schools of the District of Columbia are in session, nor before the hour of six o'clock in the morning or after the hour of seven o'clock in the evening: *Provided*, That the provisions of this section shall not apply to children employed in the service of the Senate: *And provided further*, That the judge of the juvenile court of said District may, upon the application of the parent, guardian, or next friend of said child, issue a permit for the employment of any child between the ages of twelve and fourteen years at any occupation or employment not in his judgment dangerous or injurious to the health or morals of such child, upon evidence satisfactory to him that the labor of such child is necessary for its support, or for the assistance of a disabled, ill, or invalid father or mother, or for the support in whole or in part of a younger brother or sister or a widowed mother. Such permits shall be issued for a definite time, but they shall be revocable at the discretion of the judge by whom they are issued or by his successor in office. Hearings for granting and revoking permits shall be held upon such notice and under such rules and regulations as the judge of said court shall prescribe.

SEC. 2. That no child under sixteen years of age shall be employed or permitted to work in the District of Columbia in any of the establishments named in section one, unless the person or corporation employing him procures and keeps on file and accessible to the inspectors authorized by this Act and the truant officers of the District of Columbia an age and schooling certificate, and keeps two complete lists of all such children employed therein, one on file and one conspicuously posted near the principal entrance of the building in which such children are employed.

SEC. 3. That an age and schooling certificate shall be approved only by the superintendent of public schools, or by a person authorized by him in writing, who shall have authority to administer the oath provided for therein, but no fee shall be charged therefor.

SEC. 4. That no age and schooling certificate shall be approved unless satisfactory evidence is furnished by duly attested transcript of the certificate of birth or baptism of such child, or other religious record, or the register of birth or the affidavit of the parent or guardian or custodian of a child, which affidavit shall be required, however, only in case such last-mentioned transcript of the certificate of birth be not procured and filed, showing the place and date of birth of such child, which affidavit must be taken before the officer issuing the employment certificate, who is hereby authorized and required to ad-

minister such oath, and who shall not demand or receive a fee therefor.

SEC. 5. That the age and schooling certificate of a child under sixteen years of age shall be in the following form:

AGE AND SCHOOLING CERTIFICATE

This certifies that I am the (father, mother, guardian, or custodian) of (name of child) _____, and that (he or she) was born at (name of town or city) _____ in the county (name of county, if known) _____ and State (or country) _____ on the (day and year of birth) _____ and is now (number of years and months) _____ old.

Signature of (father, mother, guardian, or custodian).

(Date.)

There personally appeared before me the above-named (name of person signing) _____ and made oath that the foregoing certificate by (him or her) signed is true to the best of (his or her) knowledge and belief. I hereby approve the foregoing certificate of (name of child) _____; complexion (fair or dark), _____; hair (color), _____ having no sufficient reason to doubt that (he or she) is of the age therein certified, I hereby certify that (he or she) can read at sight and can write legibly simple sentences in the English language and that (he or she) has reached the normal development of a child of (his or her) age, and is in sound health and is physically able to perform the work which (he or she) intends to do, and that (he or she) has regularly attended the public schools, or a school equivalent thereto, for not less than one hundred and thirty days during the school year previous to applying for such school record or during the year previous to applying for such school record, and has received during such period instruction in reading, spelling, writing, and arithmetic.

This certificate belongs to (name of child in whose behalf it is drawn) _____ and is to be surrendered to (him or her) whenever (he or she) leaves the service of the corporation or employer holding the same, but if not claimed by said child within thirty days from such time it shall be returned to the superintendent of schools.

(Signature of person authorized to approve and sign, with official character of authority.)

(Date.)

A duplicate of each age and schooling certificate shall be filled out and kept on file by the superintendent of public schools. Any explanatory matter may be printed with such certificate, in the discretion of said superintendent: *Provided*, That in exceptional cases the judge of the juvenile court, upon the recommendation of the superintendent of public schools, or the person authorized to act for him, may, in writing, waive the necessity of the schooling certificate provided for in this Act, and in such cases the age certificate shall entitle the holder to be employed without a violation of this Act.

SEC. 6. That whoever employs a child or permits a child to be employed in violation of sections one, two, eight, or nine of this Act shall be deemed guilty of a misdemeanor and, for such offense, be fined not more than fifty dollars; and whoever continues to employ any child in violation of any of said sections of this Act, after being notified by an inspector authorized by this Act, or a truant officer of the District of Columbia, shall for every day thereafter that such employment continues be fined not more than twenty dollars. A failure to produce to an inspector authorized by this Act, or a truant officer of the District of Columbia, any age or schooling certificate or list required by this Act shall be prima facie evidence of illegal employment of any person whose age and schooling certificate is not produced or whose name is not listed. Any corporation or employer retaining any age and schooling certificate

in violation of section five of this Act shall be fined not more than twenty dollars. Every person authorized to sign the certificate prescribed by section five of this Act who knowingly certifies to any materially false statement therein shall be fined not more than fifty dollars.

SEC. 7. That the inspectors authorized by this act and the truant officers of the District of Columbia shall visit the establishments named in section one and ascertain whether any minors are employed therein contrary to the provisions of this Act, and they shall report any cases of such illegal employment to the superintendent of public schools and the corporation counsel of the District of Columbia. The inspectors authorized by this Act and the truant officers of the District of Columbia shall require that the age and schooling certificates and lists provided for in this Act of minors employed in the establishments named in section one shall be produced for their inspection.

SEC. 8. That no minor under sixteen years of age shall be employed, permitted, or suffered to work in any of the establishments named in section one more than eight hours in any one day, or before the hour of six o'clock antemeridian, or after the hour of seven o'clock postmeridian, and in no case shall the number of hours exceed forty-eight in a week.

SEC. 9. That every employer shall post in a conspicuous place in every room where such persons are employed a printed notice, stating the number of hours required of them on each day of the week, the hours of commencing and stopping work, and the hours when the time or times allowed for dinner or for other meals begin and end. The printed form of such notice shall be furnished by the inspectors authorized by this Act and the truant officers of the District of Columbia, and the employment of any such person for a longer time in any day than that so stated shall be deemed a violation of this section.

SEC. 10. That the Commissioners of the District of Columbia are hereby authorized to appoint two inspectors to carry out the purposes of this Act, at a compensation not exceeding one thousand two hundred dollars each per annum.

SEC. 11. That no male child under ten, and no girl under sixteen years of age shall exercise the trade of bootblackening, or sell or expose or offer for sale any newspapers, magazines, periodicals, or goods, wares, or merchandise of any description whatsoever, upon the streets, roads, or highways, or in any public place within the District of Columbia.

SEC. 12. That from and after July first, nineteen hundred and eight, no male child under sixteen years shall exercise the trade of bootblackening or sell or expose or offer for sale any newspapers, magazines, periodicals or goods, ware or merchandise of any description whatsoever upon the streets, roads, or highways, or in any public place within the District of Columbia unless a permit and badge as hereinafter provided shall have been issued to him by the superintendent of public schools of the District of Columbia, or by a person authorized by him in writing for that purpose upon the application of the parent, guardian, or other person having the custody of the child desiring such a permit and badge, or in case said child has

no parent, guardian, or custodian, then on the application of his next friend, being an adult.

SEC. 13. That such permit and badge shall be issued free of charge to the applicant, but shall not be issued until an age and schooling certificate shall have been issued as provided in this Act.

SEC. 14. Such permit shall state the date and place of birth of the child, the name and address of its parent, guardian, custodian, or next friend, as the case may be, and describe the color of hair and eyes, the height and weight, and any distinguishing facial mark of such child, and shall further state that the age and schooling certificate has been duly examined and filed, and that the child named in such permit has appeared before the officer issuing the permit. The badge furnished by the officer issuing the permit shall bear on its face a number corresponding to the number of the permit and the name of the child. Every such permit, and every such badge on its reverse side, shall be signed in the presence of the officer issuing the same by the child in whose name it is issued. The badge provided for herein shall be worn conspicuously at all times by such child while so working, and all such permits and badges shall expire annually on the first day of January. The color of the badge shall be changed each year. No child to whom such permit and badge are issued shall transfer the same to any other person, nor be engaged in the District of Columbia in any of the trades or occupations mentioned in this section without having conspicuously upon his person such badge, and he shall exhibit the same upon demand to any police or truant officer or to the inspectors in this Act provided for.

SEC. 15. That no child to whom a permit and badge are issued as provided for in the preceding sections shall sell or expose or offer for sale any newspapers, magazines, or periodicals or goods, wares, or merchandise of any description whatever after ten o'clock in the evening or before six o'clock in the morning.

SEC. 16. That nothing in this Act contained shall apply to the employment of any child in a theatrical exhibition, provided the written consent of one of the Commissioners of the District of Columbia is first obtained. Such consent shall specify the name of the child, its age, the names and residence of its parents or guardians, together with the place and character of the exhibition.

SEC. 17. That the juvenile court of the District of Columbia is hereby given jurisdiction in all cases arising under this Act.

Approved, May 28, 1908 (35 Stat. L., pt. 1, p. 420).

JUDICIAL CODE

Laws relating to District of Columbia judiciary amended

* * * * *

SEC. 250. Any final judgment or decree of the court of appeals of the District of Columbia may be reexamined and affirmed, reversed, or modified by the Supreme Court of the United States, upon writ of error or appeal, in the following cases:

First. In cases in which the jurisdiction of the trial court is in issue; but when any such case is not otherwise reviewable in said Supreme Court, then the question of jurisdiction alone shall be certified to said Supreme Court for decision.

Second. In prize cases.

Third. In cases involving the construction or application of the Constitution of the United States, or the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority.

Fourth. In cases in which the constitution, or any law of a State, is claimed to be in contravention of the Constitution of the United States.

Fifth. In cases in which the validity of any authority exercised under the United States, or the existence or scope of any power or duty of an officer of the United States is drawn in question.

Sixth. In cases in which the construction of any law of the United States is drawn in question by the defendant.

Except as provided in the next succeeding section, the judgments and decrees of said court of appeals shall be final in all cases arising under the patent laws, the copyright laws, the revenue laws, the criminal laws, and in admiralty cases; and, except as provided in the next succeeding section, the judgments and decrees of said court of appeals shall be final in all cases not reviewable as hereinbefore provided.

Writs of error and appeals shall be taken within the same time, in the same manner, and under the same regulations as writs of error and appeals are taken from the circuit courts of appeals to the Supreme Court of the United States.

SEC. 251. In any case in which the judgment or decree of said court of appeals is made final by the section last preceding, it shall be competent for the Supreme Court of the United States to require, by certiorari or otherwise, any such case to be certified to it for its review and determination, with the same power and authority in the case as if it had been carried by writ of error or appeal to said Supreme Court. It shall also be competent for said court of appeals, in any case in which its judgment or decree is made final under the section last preceding, at any time to certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court for their proper decision; and thereupon the Supreme Court may either give its instruction on the questions and propositions certified to it, which shall be binding upon said court of appeals in such case, or it may require that the whole record and cause be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal.

SEC. 252. The Supreme Court of the United States is hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings, from the courts of bankruptcy, from which it has appellate jurisdiction in other cases; and shall exercise a like jurisdiction from courts of bankruptcy not within any organized circuit of the United States and from the supreme court of the District of Columbia.

An appeal may be taken to the Supreme Court of the United States from any final decision of a court of appeals allowing or rejecting a claim under the laws relating to bankruptcy, under such

rules and within such time as may be prescribed by said Supreme Court, in the following cases and no other:

First. Where the amount in controversy exceeds the sum of two thousand dollars, and the question involved is one which might have been taken on appeal or writ of error from the highest court of a State to the Supreme Court of the United States; or

Second. Where some justice of the Supreme Court shall certify that in his opinion the determination of the question involved in the allowance or rejection of such claim is essential to a uniform construction of the laws relating to bankruptcy throughout the United States.

* * * * *

SEC. 254. There shall be taxed against the losing party in each and every cause pending in the Supreme Court the cost of printing the record in such case, except when the judgment is against the United States.

SEC. 255. Any woman who shall have been a member of the bar of the highest court of any State or Territory, or of the court of appeals of the District of Columbia, for the space of three years, and shall have maintained a good standing before such court, and who shall be a person of good moral character, shall, on motion, and the production of such record, be admitted to practice before the Supreme Court of the United States.

* * * * *

SEC. 265. The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.

* * * * *

SEC. 274a. In case any of said courts shall find that a suit at law should have been brought in equity or a suit in equity should have been brought at law, the court shall order any amendments to the pleadings which may be necessary to conform them to the proper practice. Any party to the suit shall have the right, at any stage of the cause, to amend his pleadings so as to obviate the objection that his suit was not brought on the right side of the court. The cause shall proceed and be determined upon such amended pleadings. All testimony taken before such amendment, if preserved, shall stand as testimony in the cause with like effect as if the pleadings had been originally in the amended form.

* * * * *

SEC. 299. The repeal of existing laws, or the amendments thereof, embraced in this Act, shall not affect any act done, or any right accruing or accrued, or any suit or proceeding, including those pending on writ of error, appeal, certificate, or writ of certiorari, in any appellate court referred to or included within, the provisions of this Act, pending at the time of the taking effect of this Act, but all such suits and proceedings, and suits and proceedings for causes arising or acts done prior to such date, may be commenced and prosecuted within the same time, and with the same effect, as if said repeal or amendments had not been made.

* * * * *

SEC. 301. This Act shall take effect and be in force on and after January first, nineteen hundred and twelve.

Approved, March 3, 1911 (36 Stat., p. 1159).

POOR SUITORS

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act to amend section 1, chapter 209, of the United States Statutes at Large, volume 27, entitled 'An act providing when plaintiff may sue as a poor person and when counsel shall be assigned by the court,' and to provide for the prosecution of writs of error and appeals in forma pauperis, and for other purposes," approved June 25, 1910 (36 Stat. p. 866), be, and the same is hereby, amended so as to read as follows:

"That any citizen of the United States entitled to commence any suit or action, civil or criminal, in any court of the United States, may, upon the order of the court, commence and prosecute or defend to conclusion any suit or action, or a writ of error or an appeal to the circuit court of appeals, or to the Supreme Court in such suit or action, including all appellate proceedings, unless the trial court shall certify in writing that in the opinion of the court such appeal or writ of error is not taken in good faith, without being required to prepay fees or costs or for the printing of the record in the appellate court or give security therefor, before or after bringing suit or action, or upon suing out a writ of error or appealing, upon filing in said court a statement under oath in writing, that because of his poverty he is unable to pay the costs of said suit or action or of such writ of error or appeal, or to give security for the same, and that he believes that he is entitled to the redress he seeks in such suit or action or writ of error or appeal, and setting forth briefly the nature of his alleged cause of action, or appeal: *Provided*, That in any criminal case the court may, upon the filing in said court of the affidavit hereinbefore mentioned, direct that the expense of printing the record on appeal or writ of error be paid by the United States, and the same shall be paid when authorized by the Attorney General."

Approved, June 27, 1922 (42 Stat. L., pt. 1, p. 666).

EMPLOYMENT OF FEMALES

An Act To regulate the hours of employment and safeguard the health of females employed in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company in the District of Columbia more than eight hours in any one day or more than six days or more than forty-eight hours in any one week.

SEC. 2. That no female under eighteen years of age shall be employed or permitted to work in or in connection with any of the establishments or occupations named in section one of this Act before the hour of seven o'clock in the morning or after the hour of six o'clock in the evening of any one day.

SEC. 3. That no female shall be employed or permitted to work for more than six hours continuously at one time in any establishment or occupation named in section one of this Act in which three or more such females are employed without an interval of at least three-quarters of an hour; except that such female may be so employed for not more than six and one-half hours continuously at one time if such employment ends not later than half past one o'clock in the afternoon and if she is then dismissed for the remainder of the day.

SEC. 4. That every employer shall post and keep posted in a conspicuous place in every room in any establishment or occupation named in section one of this Act in which any females are employed a printed notice stating the number of hours such females are required or permitted to work on each day of the week, the hours of beginning and stopping such work, and the hours of beginning and ending the recess allowed for meals. The printed form of such notice shall be furnished by the inspectors authorized by this Act. The employment of any such female for a longer time in any day than that stated in the printed notice shall be deemed a violation of the provisions of this section. Where the nature of the business makes it impracticable to fix the recess allowed for meals at the same time for all females employed, the inspectors authorized to enforce this Act may issue a permit dispensing with the posting of the hours when the recess allowed for meals begins and ends, and requiring only the posting of the total number of hours which the females are required or permitted to work on each day of the week and the hours of beginning and stopping such work. Such permit shall be kept by such employer upon such premises and exhibited to all inspectors authorized to enforce this Act.

SEC. 5. That every employer shall keep a time book or record for every female employed in any establishment or occupation named in section one of this Act, stating the wages paid, the number of hours worked by her on each day of the week, the hours of beginning and stopping such work, and the hours of beginning and ending the recess allowed for meals. Such time book or record shall be open at all reasonable hours to the inspection of the officials authorized to enforce this Act. Any employer who fails to keep such record as required by this section, or makes any false statement therein, or refuses to exhibit such time book or record, or makes any false statement to an official authorized to enforce this Act in reply to any question put in carrying out the provisions of this Act shall be liable for a violation thereof.

SEC. 6. That the Commissioners of the District of Columbia are hereby authorized to appoint three inspectors, two of whom shall be women, to carry out the purposes of this Act at a compensation not exceeding \$1,200 each per annum.

SEC. 7. That the inspectors authorized by this Act may in the discharge of their duties enter any place, building, or room where any labor is being performed by females which is affected by the provisions of this chapter whenever such inspectors may have reasonable cause to believe that any such labor is being performed therein.

SEC. 8. That the inspectors authorized by this Act shall visit and inspect the establishments and places of employment named in section one as often as practicable, during reasonable hours, and shall cause the provisions of this Act to be enforced therein and also the provisions of an Act entitled "An Act to provide that all persons employing female help in stores, shops, or manufactories in the District of Columbia shall provide seats for the same when not actively employed," approved March second, eighteen hundred and ninety-five. They shall make a daily report to the Commissioners of the District of Columbia, and also report any cases of illegal employment contrary to the provisions of this Act to the corporation counsel of the District of Columbia.

SEC. 9. That any person who violates or does not comply with any of the provisions of this Act shall upon conviction be punished for a first offense by a fine of not less than \$20 nor more than \$50; for a second offense, by a fine of not less than \$50 nor more than \$200; for a third offense, by a fine of not less than \$250.

. Approved, February 24, 1914 (38 Stat. L., pt. 1, p. 291).

LIABILITY OF COMMON CARRIERS

An Act Relating to liability of common carriers in the District of Columbia and Territories and common carriers engaged in commerce between the States and between the States and foreign nations to their employees

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every common carrier engaged in trade or commerce in the District of Columbia, or in any Territory of the United States, or between the several States, or between any Territory and another, or between any Territory or Territories and any State or States, or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, shall be liable to any of its employees, or, in the case of his death, to his personal representative for the benefit of his widow and children, if any, if none, then for his parents, if none, then for his next of kin dependent upon him, for all damages which may result from the negligence of any of its officers, agents, or employees, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, roadbed, ways, or works.

SEC. 2. That in all actions hereafter brought against any common carriers to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery where his contributory negligence was slight and that of the employer was gross in comparison, but the damages shall be diminished by the jury in proportion to the amount of

negligence attributable to such employee. All questions of negligence and contributory negligence shall be for the jury.

SEC. 3. That no contract of employment, insurance, relief benefit, or indemnity for injury or death entered into by or on behalf of any employee, nor the acceptance of any such insurance, relief benefit, or indemnity by the person entitled thereto, shall constitute any bar or defense to any action brought to recover damages for personal injuries to or death of such employee: *Provided, however,* That upon the trial of such action against any common carrier the defendant may set off therein any sum it has contributed toward any such insurance, relief benefit, or indemnity that may have been paid to the injured employee, or, in case of his death, to his personal representative.

SEC. 4. That no action shall be maintained under this Act, unless commenced within one year from the time the cause of action accrued.

SEC. 5. That nothing in this Act shall be held to limit the duty of common carriers by railroads or impair the rights of their employees under the safety-appliance Act of March second, eighteen hundred and ninety-three, as amended April first, eighteen hundred and ninety-six, and March second, nineteen hundred and three.

Approved, June 11, 1906 (34 Stat. L., pt. 1, p. 232).

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